

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS

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November 13, 2009

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HELD AT: Council Chambers
City Hall

B E F O R E: LEROY G. COMRIE, JR.
Chairperson

COUNCIL MEMBERS:
Council Member Daniel R. Garodnick
Council Member John C. Liu

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

Andrew Eiler
Director of Legislative Affairs
Department of Consumer Affairs

Harvey Epstein
Project Director, Community Development Project
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CHAIRPERSON COMRIE: Good morning, my name is Leroy Comrie, I'm the Chair of the Committee on Consumer Affairs. Today we'll be holding our first hearing on Intro 1037, a local law to amend the Administrative Code of the City of New York in relation to process servers. I'd like to begin by thanking my colleague, Council Member Daniel Garodnick for introducing this piece of legislation, and for being a strong and consistent voice in the fight against unscrupulous debt collection tactics. I'd also like to thank the staff of the Consumer Affairs Committee, Damien Butvick, and Lacey Clark, for everything that they've been doing, and I want to thank Council Member Garodnick's staff, and MFY Legal Services. According to a 2008 study by MFY Legal Services, there were approximately 598,000 cases brought in the New York Civil Court. The majority of these cases were consumer debt filings. This represents a threefold increase from the number of cases brought in 2,000. Despite the high number of cases, over 90 percent of defendants in consumer debt cases never appear in court. This invariably results in a default judgment in favor

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2 of the plaintiff. Approximately 80 percent of
3 consumer debt cases filed in New York City Civil
4 Court end in default judgments. Why do so many
5 defendants fail to appear in court? In many
6 cases, improper or incomplete service of process
7 is the culprit. According to New York State Law,
8 a summons notice may be served upon a defendant in
9 a number of ways. These include personal service,
10 in which notice is delivered in person; substitute
11 service, in which notice is delivered to a person
12 of suitable age and discretion, at the defendant's
13 workplace, residence or dwelling, in addition to
14 being mailed to his or her business or last known
15 residence; and so-called mail-in mail service in
16 which, if the first two options are possible, a
17 summons is both mailed and physically posted to
18 the door of the person's workplace, home or known
19 dwelling. Among 350 consumer debt cases handled
20 by MFY Legal Services, only a handful of his
21 clients received personal service, while the vast
22 majority never received any notice whatsoever. In
23 some cases, court papers were delivered to old or
24 inaccurate mailing addresses, and in other cases
25 the summons served via substitute service, were

1 left with individuals with whom the defendant had
2 no relationship. Some unlucky New Yorkers are
3 also the victims of illegal "sewer service," which
4 is deliberate failure to deliver the notification
5 of court filing, followed by a false affidavit of
6 successful delivery. Needless to say, the failure
7 of a process server to successfully provide notice
8 to a debtor with the collection case against him
9 can be devastating when they inexplicably find
10 their assets frozen and their wages garnished.
11 Intro 1037 would use accountability for process
12 servers and--in short, that service is properly
13 given. It would revise citywide regulations by
14 separating the current licensing category into two
15 types of licenses, one for the individual service
16 and one for process server agencies. Intro 1037
17 would also add a bond requirement as a condition
18 of licensure at a cost of \$10,000 per individual
19 licensee, and \$100,000 per license agency. This
20 bond would be used to cover the cost of any fine
21 imposed upon the licensee or any final judgments
22 made as a result of a violation committed by the
23 licensee. Intro 1073 would also require process
24 service agencies to provide annual employee
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1 training regarding compliance with all applicable
2 laws and regulations pertaining to the process of
3 service. Furthermore, individual process servers
4 and process service agencies would be required to
5 maintain records for seven years for each process
6 served. Individual process servers who work only
7 as employees of process service agencies would be
8 exempt from this requirement. Finally, the
9 Commissioner of the Department of Consumer Affairs
10 would be required to develop a handbook of all
11 laws and regulations pertaining to process serving
12 in New York City, which would be distributed to
13 all process servers and process server agencies.
14 From time to time, individuals may have to go
15 through debt collections for payments owed.
16 However, we must ensure that these individuals
17 actually receive notice of these collections.
18 Given our economic climate, and at a time when
19 families worry about their financial security,
20 they should not have to face the challenge of
21 suddenly having wages garnished and assets frozen
22 for debts they were not properly notified about.
23 At this point, I would like to recognize that we
24 have been joined by Council Member John Liu, or
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2 actually I should Comptroller-Elect John Liu at
3 this point. And we will now turn over to Council
4 Member Daniel Garodnick for some opening remarks,
5 as this is his bill and Introduction. Council
6 Member Garodnick.

7 COUNCIL MEMBER GARODNICK: Thank
8 you, Chairman Comrie, and members of the Committee
9 on Consumer Affairs, for allowing me to
10 participate in today's hearing about Intro 1037
11 that you articulately described as a law relating
12 to process servers. I introduced this bill
13 because there has been a serious problem facing
14 New Yorkers who are the subject of lawsuits,
15 particularly consumer credit, consumer debt
16 lawsuits, and housing court eviction proceedings.
17 MFY's June 2008 report, called "Justice Disserved"
18 documented the many horror stories of New Yorkers
19 who were not properly served, and consequently
20 suffered great financial hardship. MFY's
21 attention to this matter signaled that there is a
22 problem to the current system, and we do need to
23 do more to legislate to effect changes here.
24 There's clearly a disconnect between the process
25 servers and the people that they are meant to

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2 serve, which has resulted in an unacceptably high
3 number of defendants who have never been served,
4 even though an action has been commenced against
5 them. Currently, process servers who are not--
6 process servers are not properly regulated, and
7 they typically receive payment only after service
8 has been completed. This combination creates a
9 system where process servers have an incentive to
10 engage in a practice which has become known as
11 "sewer service." And listening to the Chairman
12 describe the various ways of service, I was having
13 flashbacks to civil procedure class in law school,
14 which is not a positive thing for me. And they
15 are required to submit affidavits that they
16 completed service in order to get paid. Without
17 accountability the results here can be disastrous.
18 Defendants may not receive proper notification in
19 cases filed against them, and ultimately if they
20 don't receive that notification they're not going
21 to show up in court. Default judgments are
22 entered and often the first time that individuals
23 in this situation find out that they have a case
24 against them is when they find that their assets
25 have been frozen or creditors have garnished their

1 wages, causing emotional and financial distress.
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3 The practice needs reform, particularly where you
4 have the staggering number of default judgments,
5 80 percent, in consumer debt cases, and that is a
6 shocking and very disturbing number. I should
7 note, also thanks should be given to the Urban
8 Justice Center, which issued a report called,
9 "Debt Burden" or "Debt Crisis," "Debt Burden"--the
10 "Debt Weight," "Debt Weight," thank you very much--
11 --which dealt with the concerns related to debt
12 buyers in New York City, which resulted in a law
13 that I introduced and Chair Comrie chaired a
14 hearing on and was passed through the Council, and
15 signed by the Mayor, about a year-and-a-half ago.
16 This legislation will move us a, another step
17 forward in doing what we feel we need to do to
18 protect New Yorkers, by putting more stringent
19 regulations on process servers and process serving
20 agencies, so that litigants will have more
21 protection, and process servers will have a vested
22 interest in ensuring that litigants are properly
23 served. As a result of this legislation, process
24 servers will have greater accountability, and they
25 will be better trained and paid so that they have

more of a stake in effecting service properly.

So, with that, I again want to thank the Chairman for having this hearing, and I look forward to the testimony that's offered today.

CHAIRPERSON COMRIE: Thank you, Council Member. At this point, we are joined by the Department of Consumer Affairs, the Director of Legislation and Outreach, Mr. Andrew Eiler, will be giving testimony. Good morning, sir.

ANDREW EILER: Good morning, Mr. Chairman, and Committee Members, I'm Andrew Eiler, Director of Legislative Affairs for the Department of Consumer Affairs. Commissioner Mintz asked me to thank you for the opportunity to appear before you at your hearing on Intro 1037, which seeks to strengthen the process server licensing law that the Department enforces. We are pleased that the Council shares our concerns about the process server industry, which the Department of Consumer Affairs has licensed since 1970. Currently, the Department has issued 2,081 licenses to individual process servers, and 143 licenses to process server agencies. Process servers are, however, only one part of the overall landscape of debt

1 collection industries. The Department's
2 heightened concern about this industry were
3 triggered by our examination of the debt
4 collection industry and the widespread of consumer
5 credit. Technology has allowed the debt
6 collection industry to easily file cases and
7 obtain judgments against a growing number of
8 alleged debtors who became entangled in, and then
9 allegedly defaulted on, their credit obligations.
10 Indeed, almost 90 percent of consumers in consumer
11 credit actions in New York City failed to appear
12 to defend themselves in 2007. Process servers are
13 only one part of the overall landscape of the debt
14 collection industry. From fiscal year 2006 to
15 '07, the Department recorded an 18 percent spike
16 in the number of complaints docketed against
17 collection agencies. By FY'08, docketed
18 complaints catapulted into first place on DCA's
19 top five complaint categories, with complaints
20 increasing from 908 in FY'06 to 1,266 in FY'08,
21 and they're still climbing. In June 2006, the
22 Department held a public hearing on debt
23 collection which highlighted a number of predatory
24 and illegal practices in which debt collection

1 agencies were engaged. Based on the information
2 gathered from that hearing, DCA formulated
3 proposals and worked with the Council to include
4 them in legislation signed by the Mayor in March
5 2009. The new law enhanced the Department's
6 ability to curtail predatory practices by
7 expanding its reach to license debt buyers as
8 collection agencies, and strengthening the
9 requirements governing debt collection practices.
10 Enhancing the law protecting consumers against
11 predatory practices of debt collection agencies
12 that were using non-judicial process to collect
13 consumer debt is however only the first step in a
14 battle to curb predatory debt collection practices
15 targeted to consumers. The next step is to curb
16 illegal practice of process servers hired by debt
17 collection agencies when they use judicial rather
18 than non-judicial process to collect debts from
19 consumers. The most predatory practice in the
20 arsenal of process servers is sewer service. The
21 false claim by process servers that they properly
22 notified consumers they were being sued by
23 collectors when they fail in fact to do so. Sewer
24 service creates the most serious harm to consumers
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2 by enabling debt collectors to obtain judgments by
3 depriving them of an opportunity to respond and
4 defend themselves against creditor claims.

5 Protecting consumers against the abuse of sewer
6 service goes hand-in-hand with protecting
7 consumers against abuse of collection practices.

8 In June 2008, the Department held a public hearing
9 on process server practices, which broaden its
10 inquiry into abuse of debt collection practices.

11 The Department heard firsthand from consumers,
12 advocates, judges and process server agencies and
13 individual servers themselves. Testimony

14 presented at the hearing loudly and clearly
15 identified two primary and critical areas of
16 reform in process server practices: the need to

17 improve and update current requirements for
18 documenting that process server indeed serve
19 process as claimed; and the need to address the

20 fees companies currently pay for serving process,
21 particularly what they pay for attempted but
22 ineffective service. The Department's hearing

23 subsequently, and subsequent investigations

24 revealed that many process servers are paid no

25 more than \$3 for service attempts, an amount so

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2 low it creates a strong disincentive to make bona
3 fide service. In addition, I would also note that
4 the Department has been pursuing a broad process
5 server enforcement strategy, including subpoenas,
6 violations, aggressive settlements, which
7 incorporate novel remedies, license revocation
8 proceedings, and other ongoing investigations.
9 Intro 1037 calls for a number of requirements
10 designed to stem the tide of consumer abuse.

11 Because those suggestions would not address the
12 primary problem we have identified as harming
13 consumers, however, we suggest working together to
14 reshape this legislation. A few specific notes
15 concerning may be helpful. First, the licensing
16 of process server agencies suggested in the bill
17 is of course a moot point, as agencies are already
18 licensed by the Department. Second, while
19 requiring individual process servers and agencies
20 to obtain bonds may appear at first blush to be an
21 effective protective measure for consumers, we
22 believe that such a requirement is ineffective
23 because it is based on a faulty premise that the
24 financial security for the payment of fines and
25 awards for damages to consumers is needed. That's

1 simply not the problem, particularly with noting
2 that most consumers aren't even aware they've been
3 victims of sewer service. Third, the proposal to
4 extend the timeframe for maintaining records for
5 seven years would not--would be helpful because we
6 know that from testimony experience that the main
7 issue regarding records maintained by process
8 servers and agencies is not how long such records
9 are retained, but whether the records adequately
10 and properly document actual service. In its
11 current form, the proposal fails to address this
12 key issue. In addition, this proposal might be
13 inconsistent with State law provisions that
14 already provide for shorter record retention
15 requirements. Finally, the requirement that the
16 Commissioner prepare a handbook of all laws
17 governing the service of process to be distributed
18 to all service agencies is ill-advised. DCA has a
19 proud addition of educating businesses, including
20 multiple outreach opportunities, and where
21 necessary, interpretation letters. But in this
22 case, DCA's simply not the appropriate agency to
23 be tasked with creating of broad based handbook
24 suggested here, especially given the numerous
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2 State laws of general applicability that govern
3 service of process. As a practical matter, the
4 Department is not well positioned to analyze all
5 the cases that impact on process servers'
6 understanding of the law, and therefore the
7 handbook would be quickly dated. Finally, we are
8 exploring other ways in which process servers can
9 obtain training that would enhance--advance the
10 industry's understanding of the law. The
11 Department appreciates this opportunity to testify
12 today and greatly looks forward to working with
13 the Committee and the Council to ensure that
14 together we craft legislation that effectively
15 protects consumers against the predatory practices
16 in the process server industry. I'll be happy to
17 answer your questions.

18 CHAIRPERSON COMRIE: Mr. Eiler,
19 did--your last statement regarding the handbook, I
20 don't understand why DCA would not want to create
21 a rule of business practices or a handbook that
22 would give a outline of how to ensure that the
23 business of serving the, the business of process
24 serving, had some detailed regulation. Isn't
25 there a--a federal standard or, that would require

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this--

ANDREW EILER: Well, there's a lot of, there's a lot of requirements. State law, federal law, all kinds of things that could impact on proper service. And so the CPLR has all kinds of stuff in it.

CHAIRPERSON COMRIE: Right, so why-

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ANDREW EILER: And we're, we're, the Department, while it puts out information, and things about laws that we enforce, I mean for which we have responsibility and we, we have, you know, that we do, these are outside our jurisdiction, so we'd be delving into areas that really are not part of the Department's part, role. So, that's why doing this handbook and dealing with laws that we don't administer is not really something that we are, you know, well tasked to do. That's really the purview of the courts in terms of if the courts want to give process servers adequate information about how service is to be performed, that's more likely to be the place to--given that kind of information. But, you know, really us.

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2 CHAIRPERSON COMRIE: So, you're
3 saying that you would rather see the information
4 given out to the individual consumer at some point
5 as a bill of rights, or--I'm still confused as--

6 ANDREW EILER: Well--

7 CHAIRPERSON COMRIE: --isn't it the
8 role of DCA to enforce all of the consumer
9 protection laws, regardless of what jurisdiction
10 it emanated from.

11 ANDREW EILER: Well, telling
12 consumers about what to watch for, like if you're,
13 you know, of course the problem here is that what
14 to watch for happens when there's, when they're
15 finally, when their wages are garnished, and
16 that's a very late point at which to give consumer
17 information. The problem, I mean, that maybe
18 something one would to consider; however, the
19 difficulty with that kind of information that a
20 consumer is not going to find that useful, until
21 the time arises, and by the time he finds it
22 useful, it's too late. And so, it's not the kind
23 of consumer education that will fall on, you know,
24 good ground. This would be where the stuff, the
25 seeds would just lie fallow, and it just won't

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2 work, won't help. That's why it's a, it's
3 something that might be considered, but not a top
4 priority.

5 CHAIRPERSON COMRIE: Okay, but you
6 say that in your testimony, you've been pursuing
7 an enforcement strategy, including subpoenas
8 violations, aggressive settlements which
9 incorporate other novel remedies, including
10 license revocation. So, wouldn't this help you
11 with at least giving you a template to do these
12 other things, that dealing with your enforcement
13 strategy, that--

14 ANDREW EILER: Well--

15 CHAIRPERSON COMRIE: --as a general
16 term?

17 ANDREW EILER: --we're looking at
18 what they're supposed--I mean, we understand how
19 they're supposed to proceed, and we're looking at,
20 we've got an outreach program to identify, in a
21 number of different ways, where the problems are,
22 and then with the means, we have subpoenas and all
23 the rest of that stuff. Then go after, you know,
24 the process servers based on having some idea that
25 there's an issue here, and then we can delve into

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2 it. It's, how, but our outreach is really not
3 information we get from consumers, but information
4 we get from other sources, because we get very
5 little information from consumers. The number of
6 complaints in this area is minimal. So,
7 basically, we have to outreach, as I say, we get
8 information from judges, we get advocates, we get,
9 you know, other sources that trigger
10 investigations that we have been pursuing,
11 including, you know, looking over log books,
12 looking--I mean, it's, it's a very intensive kind
13 of investigation. I mean, in order to establish
14 whether or not process has been properly served,
15 based upon the documentation that's being used.

16 CHAIRPERSON COMRIE: But that's why
17 I would want to try to lean to some kind of
18 standard, so that it would be easier to, to
19 dissect or some kind of, if there's not a national
20 standard, which I think there should be, you know,
21 that there's some kind of template that you can
22 make it easier for your investigators to work
23 from.

24 ANDREW EILER: Well, that's, that's
25 why the two aspects of reform that we're talking

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2 about is really important, is because the--number
3 one, is we need more effective, better
4 documentation that process was actually served.
5 Right now, what we have, is written statements,
6 and a written law. Now this methodology was
7 really modern 200 years ago, but there, it's, it's
8 not exactly the most up-to-date way of doing it.
9 So, what we need is a more effective and more
10 complete and more accurate tech--method, of
11 ensuring that the information will be captured, so
12 that we can then go ahead and more effectively
13 check on whether or not process was served. The
14 other, I think, equally critical component is that
15 process servers are paid as little as \$3 for
16 service. Now, as far as I'm concerned, if you're
17 paying \$3 for service, you're buying sewer
18 service. Okay? That's all there is to it.

19 CHAIRPERSON COMRIE: Mhm.

20 ANDREW EILER: So, basically,
21 that's an area that, that is, that if that's
22 possible, then, then that's the incentive that's
23 created. So what needs to happen is a different
24 incentive structure, that will, you know, improve
25 the, you know, willingness, and ability, actually,

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2 of process servers to do their jobs properly. I
3 mean there's got to be sufficient, you know,
4 foundation for doing that. Otherwise, it's not
5 going to happen.

6 CHAIRPERSON COMRIE: Well, my
7 counsel and I agree that I think that handbook and
8 template would create some standard in the
9 industry that which would hopefully stop the sewer
10 service. So, and of the, the way that the--the
11 industry is handling most of their, most of the,
12 the claims that they're putting out there, which
13 is this mail in mail or sewer service that most
14 consumers don't even understand. And then lot of,
15 oftentimes is prepared in a way that the consumer
16 doesn't even understand that they've been involved
17 in a preliminary court hearing. So, kind of
18 figured, think we need to find a way to get to
19 some kind of a handbook or template to deal with
20 this industry, even if it's a suggestion, a la,
21 you know, what the Commissioner did with the--
22 that, on the bill we just pushed forward with the
23 predatory lenders, where we go to the federal
24 government and try to create a standard based on
25 what we do here in New York, that we can set the,

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2 set the pace for people on that. But that's what
3 we do as New Yorkers, is set a pace and set a
4 standard for other people to follow.

5 ANDREW EILER: Well, we like to
6 think about as pace setters, that's we do--

7 CHAIRPERSON COMRIE: Right.

8 ANDREW EILER: --and what we do in
9 consumer protection.

10 CHAIRPERSON COMRIE: So, I think
11 that, you know, clearly finding a way to, to look
12 at making sure that the, there's an effective way
13 to ensure the process is served, I think leads us
14 to looking at how we deal with creating a standard
15 for the industry. But before I go on, let me let
16 the, the Chair of the bill have some questions
17 before I take all of his particular questions,
18 'cause I want to have a little side conversation
19 with my Counsel. And that was my mother that
20 called with, I love my momma, so let me get on the
21 phone with her real quick, and--while he's making
22 a couple of questions to you. I'll be right back.
23 Councilman Garodnick?

24 COUNCIL MEMBER GARODNICK: Thank
25 you, Mr. Chairman. Mr. Eiler, thank you for your

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2 testimony. I understand from your testimony that
3 complaints related to debt collection and things
4 related to it are the number one complaint that
5 DCA is getting these days, is that right?

6 ANDREW EILER: That was, that's the
7 latest, yes.

8 COUNCIL MEMBER GARODNICK: Okay.
9 And the 90 percent of consumers in consumer credit
10 actions in New York City who failed to appear to
11 defend themselves in 2007, that's a number that
12 you accept, is that right?

13 ANDREW EILER: I have no basis for
14 contesting it, no.

15 COUNCIL MEMBER GARODNICK: Why do
16 you think that's happening?

17 ANDREW EILER: Why they don't show
18 up?

19 COUNCIL MEMBER GARODNICK: Yeah.

20 ANDREW EILER: I'm not sure that
21 anyone has really done an in-depth as to
22 obviously--one reason is they were never notified,
23 that's, that's clearly one result. And they, you
24 know, there's lots of reasons. But you know,
25 obviously failure to give adequate notice is one

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2 thing. Another thing is consumers who, even if
3 they were notified, or got something in the mail
4 or something, they may not understand or realize
5 what inf--what they got, and therefore, they just,
6 you know, we have a very broad population in the
7 City, from a lot of places, some of them do not
8 read English very well. When you get a process
9 service, it's a very complicated document, written
10 in English, and you know, people may not
11 understand. So that would be another reason why
12 people may not respond. There's a whole gamut of
13 things why people may, may end up not going, but I
14 think faulty service and failure to actually
15 notify is probably one of the most important
16 reasons.

17 COUNCIL MEMBER GARODNICK: Okay,
18 the second part of what you just said was
19 addressed at least in part by a bill that DCA
20 supported, the Mayor signed, that I introduced,
21 when we had a Chair, a hearing on here, on the
22 subject of what needs to go into a complaint for
23 consumer debt. So, we at least in part dealt with
24 some of what you describe. So now we're focused
25 on the question about the first part of what you

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2 described and what you concluded with, which was
3 the fact that many people are just simply not
4 getting the notice. This was enough of an issue
5 for DCA, for you all as you mentioned in your
6 testimony, to have a hearing on problems in the
7 process server industry. Is that right?

8 ANDREW EILER: Correct, that was
9 the second part, I mean, the second part of our
10 overall look at the collection practices.

11 COUNCIL MEMBER GARODNICK: So what
12 was the impetus for holding that hearing?

13 ANDREW EILER: Well, it was this,
14 what came out of the first hearing was the issue
15 of collection agencies and collection practices,
16 fell over into process server, you know, collect--
17 the debt buyer issue was raised at this hearing.
18 And the debt buyer issue was raised in the context
19 of individuals being sued right away. In other
20 words, foregoing the non-judicial process and
21 going directly to the judicial process. I think
22 that came out loud and clear, and that gave the
23 impetus for our proposal to require that debt
24 buyers be licensed as collection agencies, so we'd
25 have some regulatory control over their actions,

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2 as collector agencies. The second, and then so
3 based upon everything that we learned there, then
4 we said, "Well, we got to focus on the second part
5 of the problem which is what what's going on with
6 process servers?" And that's why we had that
7 hearing, where we came up with all the information
8 about inadequate service, sewer service, and all
9 sorts of failure to, the people failing to get
10 noticed and so forth and so on, that--that the
11 method that was being used was just basically
12 pointed to the two areas that I focused on reform.
13 And that is it came out loud and clear that in
14 these, what we really have here is a mass produced
15 default system. Okay? It's almost like, like, a
16 judgment factories, okay, that just spew out, you
17 know, judgments. And, and this is just all like a
18 process that just, and an assembly line format,
19 just runs these things through the system. And
20 one of the aspects of how this gets run quickly
21 through the system is that, you know, the
22 defendant never appears, it just goes, you know,
23 just runs it right, and there you have it. And
24 then creditor gets a judgment that's good for
25 years, that can be served, and so forth and so on.

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2 So, that's why we focus on the two areas of the
3 reform, that are essential in terms of changing
4 the behavior in the process server industry in
5 ways that they can be held accountable. And one
6 of the ways is, of course, improve documentation
7 of service that we could verify, that it actually
8 happened. And then the other aspect of the
9 situation is of course if--that came up over and
10 over again in the testimony. That process servers
11 are being paid \$3, and in a mass produced system,
12 \$3 is just, I mean, what are we talking about?
13 That's not going to, you can't do it, it's not
14 possible. Now, when, when plaintiffs want to
15 serve, okay, they are, I mean, when you're having
16 lawsuits that are meaningful, that count, and that
17 involve a lot of money and so forth and so on, we
18 also learned that process server agencies would
19 charge \$30-\$40-\$50 for service, when, you know,
20 basically when you have situations where, you
21 know, the litigants really want to--they don't
22 want to mess around, and if they don't properly
23 serve, the defendant will be able to deal with the
24 situation. And that's the difference between the
25 clunker used car service and the Cadillac service.

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I mean, you know, night and day.

COUNCIL MEMBER GARODNICK: So, if I'm understanding you correctly, if you pay \$3 for service, you really don't want that paper to get served.

ANDREW EILER: You don't care.

COUNCIL MEMBER GARODNICK: You don't care. At--at best, you're apathetic.

ANDREW EILER: Yes.

COUNCIL MEMBER GARODNICK: Okay. And the other point that you made was the need to improve the documentation. You said before that written statements, written log, it's just not up to date, and we need a more effective and complete method to ensure that the information has been captured here. Were you able, was DCA able to come up with a specific proposal as to how to do that?

ANDREW EILER: Not yet. That's what we're, that's what we're crafting, and that's what we want--we'd be glad to discuss that whole process with you on how best to do that.

COUNCIL MEMBER GARODNICK: Is it within the power of the DCA to affect those rules?

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2 The power of DCA, perhaps a long with the Counsel,
3 could we, together, the Mayor and the Counsel
4 here, set new or additional rules on the
5 documentation of service.

6 ANDREW EILER: See that, that's the
7 area in which we, the Counsel, the City, through
8 the Department of Licensing, does have, I think,
9 jurisdiction. And that is that we're not saying
10 how service is required to be done, all the rest
11 of that stuff, that's basically CPLR's, so forth
12 and so on. We don't have any control over that.
13 But the documentation that the process server is
14 supposed to maintain to prove that they have in
15 fact performed as required, rather than what
16 they're required to perform, that's the area that
17 we could address.

18 COUNCIL MEMBER GARODNICK: Well,
19 I'm certainly open to including that into this
20 bill, and will look forward to working with you on
21 how to make this work best, whatever it is that we
22 come up with here. I wanted to note that you said
23 that the Department has been pursuing a process
24 server enforcement strategy, which includes
25 subpoenas, violations, aggressive settlements,

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2 which incorporate novel remedies. Could you say
3 some more about what that is?

4 ANDREW EILER: Not at this point.

5 COUNCIL MEMBER GARODNICK: Is this
6 a new effort by the Department?

7 ANDREW EILER: Well, it triggered
8 from our, from what we heard, I mean at that
9 point, we said, well, we really have to, now we
10 have to be innovative and see what we can really
11 do with regard to what's going on. Then we had to
12 go outreach and all the, how do we find? Because
13 frankly, it didn't come upon--this issue did not
14 come up on our complaint radar scope, it just
15 didn't. It was very little, very minimal kinds of
16 consumer complaints about this matter of failure
17 to be served and so forth and so on. It was--

18 COUNCIL MEMBER GARODNICK: Because
19 it came up as debt collection complaint. It came
20 as a subset of that.

21 ANDREW EILER: Well, no, debt
22 collection, debt collection was actually prior.
23 Debt collection is really debt collection non-
24 judicial process. That's, those are those kind of
25 complaints, because frankly, once, once a matter

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2 has gone to court, we do not docket those
3 complaints, because basically it's beyond our,
4 beyond our jurisdic--'cause there's nothing--there
5 you need legal steps, it's not trying to mediate a
6 complaint. You got to go to court.

7 COUNCIL MEMBER GARODNICK: So,
8 it's, it's actually rather hard for DCA to even
9 quantify the amount of sewer service that is out
10 there.

11 ANDREW EILER: Correct.

12 COUNCIL MEMBER GARODNICK: But you
13 suspect that it's a--

14 ANDREW EILER: Yeah.

15 COUNCIL MEMBER GARODNICK: --a
16 significant problem.

17 ANDREW EILER: Yeah, it's a
18 significant--it's even hard to go to the court, to
19 go look for traverse hearings. That's not, I
20 mean, that's a rather opaque data pool, with
21 regard to, you know, how much, how it's settled,
22 how resolved, what, you know, what happens, and so
23 forth and so on. So.

24 COUNCIL MEMBER GARODNICK: I'm not
25 going to ask you about your ongoing

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2 investigations, which you noted here. But I am
3 going to ask you about license verification
4 proceedings. Have you, in any of the, the pursuit
5 that the Department has undertaken--

6 ANDREW EILER: That's--

7 COUNCIL MEMBER GARODNICK: --that
8 you mentioned in your testimony, have you actually
9 revoked any licenses of process servers?

10 ANDREW EILER: That's one of the
11 remedies that's been in place, yes.

12 COUNCIL MEMBER GARODNICK: So, how
13 many licenses did you revoke?

14 ANDREW EILER: I'm not, don't have
15 that number right now.

16 COUNCIL MEMBER GARODNICK: Okay,
17 well, if you could get back to us with that,
18 because I know you noted in your testimony that
19 there were just a little north of 2,000 licenses
20 to individual process servers and only 143
21 licenses to process server agencies. If you could
22 share with us, to the extent that any were
23 revoked, whether they were invoked--I'm sorry,
24 revoked in the category of licenses for
25 individuals, or licenses for process servers, and

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2 why, would also be very useful. I don't know if
3 that's already on your website. And if it is, my
4 apologies, but that's useful to us to understand
5 what sort of issues DCA is going after already.
6 And if you guys have not yet revoked licenses, I
7 think it adds additional weight to the need for us
8 to take some legislative action here, and it
9 sounds like you all are certainly open to
10 legislative action. Going back to your testimony.
11 On the point of a handbook of all laws, you said
12 you thought it was ill-advised. I couldn't
13 disagree with you more on this one. To say that
14 DCA is not the appropriate agency, or that DCA is
15 not well positioned, if it's not the DCA in the
16 City, who would you recommend in the City of New
17 York be responsible for pulling together the
18 applicable laws here?

19 ANDREW EILER: I, as I said, at
20 first blush and glance, it's the court system
21 that's responsible for handling of the service,
22 the lawsuits, and so forth and so on. So if the
23 court system, you know, wants to instruct and
24 create templates, making clear to process servers
25 what they're obligations are, it really is the

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2 Office of Court Administration, or something like
3 that, which, who would be in the best position to
4 say, "This is how we want this done." And they
5 are, and they are in a position to tell process
6 servers that that's--that's how service is
7 expected to be performed. And it seems to me that
8 they're probably the best agency in terms of doing
9 this.

10 COUNCIL MEMBER GARODNICK: Okay,
11 which is the best agency within the City's
12 jurisdiction to be able to handle this? I guess
13 is the better question.

14 ANDREW EILER: Well, that's--Again,
15 I think the best place to do it is there, I'm not
16 sure.

17 COUNCIL MEMBER GARODNICK: You and
18 may, you and I may agree that of the City
19 agencies, that perhaps DCA would be the best, but
20 that perhaps the best, best of all would be some
21 entity within the court system. Is that, is that
22 a fair--

23 ANDREW EILER: I'm not, I don't
24 want to single out any other agency that might--I
25 can't, I haven't thought of it, what--

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2 COUNCIL MEMBER GARODNICK: Well, do
3 you guys do the licensing for process server
4 agencies?

5 ANDREW EILER: We do the licensing,
6 but--

7 COUNCIL MEMBER GARODNICK: And
8 what's the basis for issuing licenses to process
9 servers, either as independents or as agencies?

10 ANDREW EILER: Well, I mean,
11 basically, that they're a general requirement that
12 they have not done things that would disqualify
13 them from having a license. I mean, obviously if
14 they've been caught in traverse hearings, that
15 they've been caught doing, violating the law and
16 stuff like that, yes, then those would be issues
17 for whether or not they would be qualified.

18 COUNCIL MEMBER GARODNICK: So if I
19 wanted to come to you and say, "I, today, would
20 like to server process, I've decided to put this
21 City Council stuff aside, and I'm going to become
22 a process server, I'd like you to license me."
23 You would look me up to see whether I have
24 violated the law in any other process serving
25 context, or perhaps even any context. And then

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you would simply issue me a license?

ANDREW EILER: If, I mean, anything, 'cause I'm not exactly sure what the specific steps, you know, what they review in the license process. But unless some red flag comes up, that indicating that you're not qualified, I mean, then you would be qualified.

COUNCIL MEMBER GARODNICK: And am I qualified? I mean, I have not committed any crimes, so you can rule that out.

ANDREW EILER: I would, just sitting here, that you're, I think--

COUNCIL MEMBER GARODNICK: So the question is--

ANDREW EILER: If I'm looking at you, sir, I think given the fact that you're a Council Member, I'd say you were qualified.

COUNCIL MEMBER GARODNICK: Okay. And then I am, I get my license from DCA. Thank you. I've got my license, and I now want to hang up a shingle and say, "I am a process server." Now, I don't know, I mean, I did, again, I did take Civil Procedure, and I did hear the Chairman describe the various forms of nail and mail and

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2 personal service, and all the, all that stuff.
3 But that really is the extent of my individual
4 knowledge at this moment. So, I am now in,
5 empowered or able to be hired to serve process if
6 anybody were so inclined to hire me for \$3 bucks
7 a, \$3 bucks a service?

8 ANDREW EILER: Once you have a
9 license, then you're, then you're qualified to be
10 serving process.

11 COUNCIL MEMBER GARODNICK: Okay.
12 So, DCA gives me the license after a review of my
13 back--criminal background. Do you give me any,
14 any training at all?

15 ANDREW EILER: No, the Department
16 does not do any training for process servers.

17 COUNCIL MEMBER GARODNICK: Do you,
18 do you give me any handouts, information about
19 what is legit, what is not?

20 ANDREW EILER: Frankly, I'd have to
21 check to see exactly what's in the application. I
22 mean, it's on our website, people can get all the
23 information, that's what process servers are
24 given. They're, they're told what, informed about
25 what they need to provide and what's looked at.

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COUNCIL MEMBER GARODNICK: Okay.
So, we, we don't exactly know, or--sitting here today, what exactly is the process beyond a criminal background check. And we're not even sure if it's a criminal background check. We're talking about a criminal background check related to issues of process serving.

ANDREW EILER: Well, that's for sure.

COUNCIL MEMBER GARODNICK: Okay, but so maybe just that.

ANDREW EILER: Well, keep in mind, with a criminal background check, with respect to criminal, it has to be something related to, based upon the State law, it has to be something related to the activity. It can't be just any kind of criminal activity.

COUNCIL MEMBER GARODNICK: Got it. And the cost for my license?

ANDREW EILER: \$340.

COUNCIL MEMBER GARODNICK: How much?

ANDREW EILER: \$340.

COUNCIL MEMBER GARODNICK: \$340

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2 bucks. Okay, so \$340 bucks without a criminal
3 problem, I am in business. Okay. And no
4 additional guidance from DCA, and no guidance
5 necessarily from anybody, if I am going to do this
6 on my own as an independent, licensed entity. Is
7 that right?

8 ANDREW EILER: Well--Well, except
9 to the extent I--I mean, the laws are, to serve
10 process, the laws are on the books, the process
11 servers, I mean, you know, if you're going to
12 serve, you're expected to know how you're supposed
13 to do it. And I'm--I would imagine that process
14 server agencies who hire process servers, would at
15 least check on the qualifications to some extent
16 of the people that they hire.

17 COUNCIL MEMBER GARODNICK: Okay.

18 ANDREW EILER: That at least they
19 are familiar with their duties and
20 responsibilities.

21 COUNCIL MEMBER GARODNICK: Well,
22 the process server agencies, as you pointed out in
23 your testimony, represent a miniscule fraction of
24 the overall number of licenses that are issues by
25 the City. Right, go back to that number a second

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ago, a second that gave.

ANDREW EILER: 140 plus.

COUNCIL MEMBER GARODNICK: 143 are process server agencies, and 2,081 are individual process servers like the scenario in which I hung up a shingle.

ANDREW EILER: But most of--

COUNCIL MEMBER GARODNICK: If I even did that.

ANDREW EILER: But most of them work through process server agencies.

COUNCIL MEMBER GARODNICK: Most service of process comes through--

ANDREW EILER: I mean--

COUNCIL MEMBER GARODNICK: process serving agencies.

ANDREW EILER: Process server agencies are the ones who then mostly distribute-- I don't know, I don't know the exact numbers, we don't have statistics on the scope of who handles how many process. But essentially, I think most process servers will get their business from process server agencies.

COUNCIL MEMBER GARODNICK: Is there

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2 any reporting requirement for anybody with a
3 process serving license for renewal or to show how
4 much service of process they did during the time
5 of their license?

6 ANDREW EILER: Well, they just had
7 their log books. That's their, that the
8 requirement for them is to maintain the log books.

9 COUNCIL MEMBER GARODNICK: Okay,
10 so, let's, then let's go back for one, one more
11 second, that's a DCA requirement?

12 ANDREW EILER: Definitely is, but I
13 think it's also State law.

14 COUNCIL MEMBER GARODNICK: Okay.
15 But in order for somebody to get a renewal of a
16 license, how long is a license good for, by the
17 way?

18 ANDREW EILER: Two years.

19 COUNCIL MEMBER GARODNICK: Two?

20 ANDREW EILER: Mmhm.

21 COUNCIL MEMBER GARODNICK: So, I do
22 my thing, I get the license from you guys, two
23 years come and I want a renewal. Presumably it
24 costs me another \$340 bucks. Do I need to present
25 my log books to you?

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2 ANDREW EILER: We could request it,
3 yes.

4 COUNCIL MEMBER GARODNICK: That
5 wasn't the question. I want to know, am I
6 required to present my log books to you?

7 ANDREW EILER: No.

8 COUNCIL MEMBER GARODNICK: Okay.
9 And you noted before that process servers are
10 expected to know the rules. And yet in the
11 example that we talked about me, as a new process
12 server, nobody actually ever taught me or required
13 that I know any rules. Is that fair?

14 ANDREW EILER: I'm not in, I--I
15 don't, have not the details in terms of exactly
16 how and what educa--or how process servers acquire
17 the information. I mean, how they learn about
18 what they're required to do, and who in fact
19 teaches them. I mean, we do not have a program
20 for teaching process servers, that's not part, I
21 mean, that's not part of our res--role as of this,
22 as of now. Again, as I went back to, it's
23 essentially the courts that should be telling, or
24 specifying, the requirements for process servers
25 and what they're supposed to be doing. They're

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2 the primary recipients of the--and essentially
3 it's within their purview.

4 COUNCIL MEMBER GARODNICK: Why do
5 you think that we have a licensing requirement in
6 the City? For process servers.

7 ANDREW EILER: Well, the licensing
8 req--

9 COUNCIL MEMBER GARODNICK: And do
10 you think it's a good idea?

11 ANDREW EILER: I think it's a good
12 idea, because it's a way--I mean, clearly, what
13 we're doing now with the investigations, it's
14 having an impact. And the fact that they do have
15 to--

16 COUNCIL MEMBER GARODNICK: But you
17 could do investigations without licensing, so--

18 ANDREW EILER: Yes, but, but the,
19 but the fact--

20 COUNCIL MEMBER GARODNICK: Why is
21 licensing important?

22 ANDREW EILER: Because once you
23 have a license that you're required to have, then
24 we have some oversight over the activity. One of
25 the more important ones is the log books, and

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requiring that the review of the log books and so forth and so on.

COUNCIL MEMBER GARODNICK: Sorry, who's review of the log books?

ANDREW EILER: Well, DCA is in a position as recordkeeping requirements, we can review the log books--

COUNCIL MEMBER GARODNICK: You can, but, but do you?

ANDREW EILER: We have. We certainly are, as part of the investigation.

COUNCIL MEMBER GARODNICK: Ah, so if somebody is specifically targeted, you ask them to look at their log books.

ANDREW EILER: That's correct.

COUNCIL MEMBER GARODNICK: But it's not part of any renewal of license.

ANDREW EILER: To tell you the truth, many, many years ago, when I did some volunteer work for the Department, that's what I did. I reviewed log books. Actually, I didn't review log books, I compared log books to the court filings. Okay? And it turned out that I found somebody engaged in serving process at two

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2 different places at the same time. And this was,
3 but this was going through the actual court
4 documents and when they claimed service was made,
5 and in going through their log books, and
6 comparing them, okay, I spent literally, literally
7 hundreds of hours doing this. And this was a
8 very, very tedious project, but I was sure that if
9 I went at it long enough, I was going to get 'em.
10 And I got three, okay, but that's, in other words,
11 just looking at the logs books, by themselves,
12 does not tell you very much. So, that these guys,
13 if you looked at the log books, every service were
14 15 minutes apart, blah-blah-blah-blah-blah-blah,
15 so if you went through the log book, it would be
16 great, but it wouldn't tell you anything. So,
17 unless you have some other information that would
18 lead you to believe that there is something going
19 on here that merits looking and puts you in a
20 direction, I don't think it would be terribly
21 worthwhile to go through hundreds and hundreds and
22 hundreds of log entries. It wouldn't tell you
23 anything.

24 COUNCIL MEMBER GARODNICK: Okay.

25 And that, by the way, sounds like a huge task that

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2 you undertook. And I don't envy that task, it
3 sounds like it was extremely difficult. But from
4 what I hear you're saying, is that you believe
5 licensing is important because it gives DCA the
6 power to conduct oversight, is that right?

7 ANDREW EILER: That's correct.

8 COUNCIL MEMBER GARODNICK: Okay.

9 And I'm not going to, to ask too many, I'm not
10 even sure I'm going to ask any more questions
11 here, 'cause we have lots of people who want to
12 testify, but I think that it is very clear from
13 your testimony here that we need to give you all
14 the tools to be able to do what you need to do,
15 and I'm going to put aside the question of bonding
16 for a second, because I understand you're focused
17 as DCA on the, the dollars, and the record
18 keeping, and I think you have two points right on
19 the money. And I think we're going to hear from
20 advocates as to why, perhaps, some of the nuts and
21 bolts as proposed in the bill, make sense to
22 address some of those issues. But I wanted to
23 thank you for your, your insights here, I think we
24 are in agreement, as we usually are, that there is
25 a problem here, that licensing is important, and

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2 that people are not sufficiently protected here
3 from sewer service, and that DCA has to be able to
4 have the tools to be able to enforce and to be
5 able to, to do so in a way that is easier than
6 spending hundreds of hours just slogging through
7 log books. Did I get that fair?

8 ANDREW EILER: That's fair.

9 COUNCIL MEMBER GARODNICK: Okay.

10 ANDREW EILER: I just want to add
11 one thing, is that remember on our web--the laws
12 are on the website, so there's access to the,
13 access to the laws. So it's not as though that's,
14 it's a mystery, but it's there.

15 COUNCIL MEMBER GARODNICK: So, DCA
16 compiles the laws--

17 ANDREW EILER: No, no, there's,
18 there's the, the laws governed, they're
19 accessible.

20 COUNCIL MEMBER GARODNICK:
21 Governing process server.

22 ANDREW EILER: Yeah, are, are
23 accessible on--online.

24 COUNCIL MEMBER GARODNICK: So, you
25 pull together the variety of laws that apply to

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process servers.

ANDREW EILER: That's part, yeah, so we have, we have access to, I mean, basically, the, the website has links to laws governing stuff.

COUNCIL MEMBER GARODNICK: So you put, you have links.

ANDREW EILER: Yes.

COUNCIL MEMBER GARODNICK: Okay. Okay. Thank you, thank you for your, for your testimony, I appreciate it.

ANDREW EILER: Thank you.

CHAIRPERSON COMRIE: Andrew, who sets the \$3 rate that, for process? Is that just in something that the industry set as a standard? Or where did that come from?

ANDREW EILER: They, they do it, there's nothing, I mean it's just the marketplace.

CHAIRPERSON COMRIE: And are you aware that other jurisdictions have put together mandatory training courses, and educational and insurance standards for process servers? Have you guys looked--or was it brought up during your hearing, regarding process servers, that other

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2 states and other municipalities are creating
3 training programs?

4 ANDREW EILER: Yeah, I think--
5 there's no doubt that training programs, you know,
6 administered in the proper manner, would be, you
7 know, helpful, and ensure that process servers
8 know what their responsibilities and duties are.
9 I'm just, you know, that's a question of whether
10 or not the Department is the, you know, proper
11 trainer. That certainly the obligation for
12 training, I mean, one of the parts of the bill
13 that you have is to obligate the process server
14 agencies to conduct and engage in training. And
15 certainly to require them to give their agents the
16 appropriate information, information about process
17 service, however they expect to do it, give 'em
18 handbooks and so forth and so on. That certainly
19 would be an appropriate thing to do. That that's
20 what agencies should be doing.

21 CHAIRPERSON COMRIE: Well, I think
22 DCA probably should take a larger role in that, an
23 oversight role, and I think that's something we
24 could work towards.

25 ANDREW EILER: We are exploring, as

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2 I said in my testimony, we are exploring ways of
3 reaching or doing training for process servers.
4 It's just that the obligation, as specified that
5 we have concerns about being, having that
6 obligation, in that form.

7 CHAIRPERSON COMRIE: Well, I think
8 I trust DCA to do it better than any other agency
9 that's out here at the moment, that I can see on
10 the City level, anyway; on a State or federal
11 level, that, you know, I think again, you know, we
12 should probably try to set the standard, to see
13 that happen. As you know, with the recent suit
14 filed against the process servers by Attorney
15 General Andrew Cuomo, it was to, done through an
16 audit. So, you know, I think that unfortunately,
17 the, I think that DCA should randomly audit 20
18 agencies per year, just as, you know, the IRS
19 audits people. I think that would be a good way
20 to create a understanding among all of the process
21 service agencies that, you know, you're going to
22 get audited once every four years. And would make
23 them develop a higher rate of, or higher standard
24 for practice, that they would know that they would
25 be subjected to an audit. And, and I know that,

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2 as you said, it's a tedious and not a, not an
3 event that anybody would look forward to doing,
4 but it would also, you know, increase the level of
5 accountability done by these process servers. And
6 hopefully put the advent of better technology, you
7 know, could be done. That the means to do the
8 check and do the audit might be done easier. So,
9 you know, I have faith in the agency to take on
10 these additional responsibilities, in order to
11 protect consumers.

12 ANDREW EILER: Well, if you have
13 the better methodology for doing better tools for
14 doing it, that might be a more possible--

15 CHAIRPERSON COMRIE: If we set the
16 handbook, then we could create the methodology.

17 ANDREW EILER: The handbook doesn't
18 give us the information.

19 CHAIRPERSON COMRIE: Oh, well,
20 okay, but if we, if we set the process, or set the
21 pace, we could create the methodology, which would
22 make it easier. So, I keep going back to that.
23 But, you know, I do appreciate you being here this
24 morning and giving us your desire of the agency to
25 at least want to look into this. And I understand

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2 that you don't have any specifics to come back to
3 us today. Do you have another hearing scheduled
4 to do a follow up based on a hearing that you've
5 had, held earlier this year? Or was that in 2008?

6 ANDREW EILER: You mean a public
7 hearing on process servers?

8 CHAIRPERSON COMRIE: Right.

9 ANDREW EILER: We don't have
10 anything scheduled at this time. I mean, that
11 we're, we're still digesting the results of the
12 past.

13 CHAIRPERSON COMRIE: And have you
14 been working with the attorney general's office,
15 or with the State Department of Consumer Affairs,
16 to share the results of the hearing, so that you
17 could come up with some next steps, or we're still
18 processing?

19 ANDREW EILER: We're--well, I mean,
20 I think we've been in touch, Marla has been in
21 touch with the attorney general's office, but I
22 mean, you know, they, they also march to their own
23 drummer, they don't share their investigations
24 with us, so. They, they march to their tune. So-

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2 CHAIRPERSON COMRIE: And I think
3 that we should develop our own march, and, and
4 again, get back to the idea of creating a
5 standard. So.

6 ANDREW EILER: I sort of, I hope I
7 sort of pointed to the notes that we should be
8 seeking.

9 CHAIRPERSON COMRIE: I hope so.
10 So. Alright, well, appreciate your being here and
11 again, giving us the idea that at least the
12 Department of Consumer Affairs wants to do
13 something about this issue, and hopefully together
14 working with Councilman Garodnick and myself and
15 other, the advocates we could find a way to make
16 this a better industry, and a safer opportunity
17 for consumers.

18 ANDREW EILER: I certainly look
19 forward to that, and I think we have a template
20 for how to do it.

21 CHAIRPERSON COMRIE: Right.
22 Council Member Garodnick has a follow up.

23 COUNCIL MEMBER GARODNICK: Thank
24 you, one, just one last question. When you lic--
25 when the DCA licenses process servers, process

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2 serving agencies, or process servers, if a process
3 server agency is based out of New York, but is
4 serving process in New York, do they get licensed
5 by the DCA?

6 ANDREW EILER: That's a technical
7 jurisdictional question. I would think it, the
8 way the law reads, anyone serving within the City
9 of New York, so I would, based upon that, I would
10 suggest that they would, but it's--

11 COUNCIL MEMBER GARODNICK: Wouldn't
12 you suggest that's also how the law should be,
13 regardless--

14 ANDREW EILER: Well, that is, I
15 think that's how, I mean, I don't have it in front
16 of me, but I believe it's anyone enga--serving
17 process or doing business in New York. So if
18 you're serving process in New York, I think you
19 should be caught, but I--

20 COUNCIL MEMBER GARODNICK: Well, as
21 a general matter, when DCA makes rules that
22 protect consumers, they don't make a distinction
23 between whether somebody is based out of, or based
24 inside of New York City--

25 ANDREW EILER: Well--

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2 COUNCIL MEMBER GARODNICK: They--
3 isn't that correct?

4 ANDREW EILER: Well, you can get
5 into technical scenarios, like for example, what
6 if the process serving agency was located in New
7 Jersey, and they hire process servers who operate
8 in New York, but get all their orders in New
9 Jersey? So, I--I don't want to answer that
10 question in terms of to what extent and how that
11 process serving agency would then be, because are
12 they then directly serving in New York or not?

13 COUNCIL MEMBER GARODNICK: Well, I
14 guess question is if they're actually serving in
15 New York.

16 ANDREW EILER: Well, there you go.
17 And if they're using an agent and they're only
18 giving him the papers, you know, there are some
19 technical things here, I don't want to--

20 COUNCIL MEMBER GARODNICK: Okay, so
21 we, so you don't know the answer right now, as to,
22 as to whether they're covered.

23 ANDREW EILER: Not under certain
24 circumstances.

25 COUNCIL MEMBER GARODNICK: Okay.

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2 ANDREW EILER: I mean, if they're
3 engaged in actual, I mean, you know, doing
4 business, then, then obviously that would be one
5 story. But there is--I can conceive of situations
6 where it might be a question.

7 COUNCIL MEMBER GARODNICK: Okay, if
8 somebody wants a vendor license, they live in New
9 Yor--in New Jersey.

10 ANDREW EILER: They can get one.

11 COUNCIL MEMBER GARODNICK: They get
12 a license and they're covered, they're covered by
13 your rules, right?

14 ANDREW EILER: Yeah, but they're--
15 Right, but they're vending in New York.

16 COUNCIL MEMBER GARODNICK: Right.

17 ANDREW EILER: So, we don't care
18 where they live, it's where they vend.

19 COUNCIL MEMBER GARODNICK: Okay, so
20 we don't care where they live, it's where they
21 serve, right?

22 ANDREW EILER: Right, and but, but
23 I, but the scenario I pointed out is under certain
24 circumstances, there might be a question as to
25 whether or not they're actually engaged in the

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2 business in New York, for the purpose of licensing
3 requirement. It's possible.

4 COUNCIL MEMBER GARODNICK: And
5 what's the position, what's the position of DCA on
6 this?

7 ANDREW EILER: I, it's not
8 something I want to--this, this is a very
9 technical, legal issue of very particular--very
10 particular circumstances, and I don't want to give
11 an answer.

12 COUNCIL MEMBER GARODNICK: Thank
13 you.

14 CHAIRPERSON COMRIE: Alright, well,
15 thank you, Andy, for coming in this morning. And,
16 you know, I might want to suggest that that would
17 be a good, auditing would be a good project for
18 interns to do. So, we'll take--

19 ANDREW EILER: [laughs]

20 CHAIRPERSON COMRIE: --take a look
21 at that, since you have an intern with you this
22 morning. Although you may not get any more if
23 they go and find out--

24 ANDREW EILER: That's right!

25 [laughs]

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2 CHAIRPERSON COMRIE: Well, we'll
3 see. Alright, well thank you.

4 ANDREW EILER: Alright.

5 CHAIRPERSON COMRIE: Thank you for
6 being here.

7 ANDREW EILER: Thank you.

8 CHAIRPERSON COMRIE: And the next
9 panel we'll call is Harvey Epstein from the Urban
10 Justice Center, and Carolyn Coffee from MFY Legal
11 Services. [pause]

12 HARVEY EPSTEIN: Good morning,
13 Councilman Comrie, good morning, Councilman
14 Garodnick, thank you for the opportunity to
15 testify here today. My name is Harvey Epstein and
16 I'm the Project Director of the Community
17 Development Project at the Urban Justice Center.
18 I want to thank you both for your leadership on
19 these issues. Our office represents over 9,000
20 individuals every year in New York City, and the
21 issue of process servers is a fundamental issue
22 for us. I want to respond to just what some of
23 the things Mr. Eiler said about, around his
24 testimony. First, I appreciate that he oversees
25 licenses. But it's my understanding the last

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2 decade that we haven't heard of any license being
3 revoked in New York City. We've heard maybe one
4 in the '80s. But we really appreciate the DCA
5 doing a much a job trying to oversee this
6 industry. But we really need reform in this
7 industry. The other issue is around new
8 submissions, the way they submit information, and
9 he's saying that, "Well, they maintain their logs
10 and DCA can oversee those logs," but we need a
11 process that works for the public, and a process
12 that people can follow. I appreciate that Mr.
13 Eiler, when he was an intern, went through logs
14 and got information and went to court, but there's
15 got to be a process that everyone can follow. And
16 I think right now the Council's going in the right
17 direction. I think we need to go much farther
18 than that. I think the sections of 403, 406-B,
19 406, 2, 3, or really and 4, are really important,
20 and we support that. But I would encourage the
21 Council to think about additional reforms. First
22 is a private right of action. While, the bonding
23 requirement is a powerful method to guaranteeing
24 compliance, there's clearly limitations in DCA's
25 enforcement. The bill must require a private

1 right of action for the victims of sewer service,
2 so they can file claims against these process
3 servers. There's precedent for the private right
4 of action in the Administrative Code, 2743.1 of
5 the Civil Cause Action, and 20401. Both create
6 private rights of action against tax preparers and
7 grant victims injunctive relief, punitive damages
8 and attorney's fees. This, more than anything
9 else, would prevent sewer service from process
10 serves. Second, there should be an annual
11 requirement for the process servers file their
12 logs with the Department of Consumer Affairs.
13 This is fairly easy in electronic filing. All
14 they have to do is take a PDF of their files and
15 submit it to DCA. Therefore, on an every two year
16 basis, when they're reviewing their license, if
17 the issues are raised by DCA around whether there
18 is appropriate problems with their license, they
19 will have the logs. Our experience is that even
20 though they maintain their logs, there's no
21 opportunity for someone to oversee the logs,
22 review the logs, and if DCA had them, that would
23 make them more accessible for the public. If you
24 were concerned that they didn't serve you on a
25

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2 proper day, without going into court and doing a
3 traverse hearing, there's no way to get access to
4 that information. Someone can go, say "Well, you
5 know, did you come to Queens on that day at 2:00
6 o'clock in the afternoon?" and you can get the log
7 and find out. And that will help the public.

8 That'll also oversee the process server agencies
9 in a way that the current law does not. I really
10 support what you were saying, Councilman

11 Garodnick, about the process. If there is no
12 process, if there is no oversight, if there is no
13 training, what expectations can we have as a
14 public to what process servers will be doing?

15 That's what we're looking for, we're looking for a
16 process to educate them, which is what this bill
17 talks about. We're looking for a process of
18 oversight, which is following, making them follow
19 their logs, and if they screw up, we want to sue
20 them. And that's what we're looking for as
21 advocates. Thank you for your time today.

22 CHAIRPERSON COMRIE: Go ahead,
23 mmhm.

24 CAROLYN COFFEE: My name is Carolyn
25 Coffee, I'm a senior attorney with MFY Legal

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2 Services, working Poor Project and its Consumer
3 Rights Project. I'd like to thank you for the
4 opportunity to testify today about this very
5 important legislation. As you know, as you cited
6 before, MFY issued a report last year called
7 "Justice Disserved," which looked at 180,000 cases
8 filed in civil court, and catalogued how default
9 judgments due to improper service, absolutely
10 wreak havoc on the lives of many of MFY's clients.
11 Most of our clients are the poor and the working
12 poor, retirees, disabled individuals. And many of
13 these individuals rely solely on social security,
14 veteran's benefits, pensions. Our report focused
15 on just seven debt collection law firms and we
16 found a really extraordinarily high default
17 judgment rate. And the civil court has also
18 reported similar high rates of default judgments
19 in these consumer cases. As you cited before, the
20 repercussions of default judgments are
21 devastating. Instead of having an opportunity to
22 defend themselves in court, consumers first learn
23 of litigation against them when their wages are
24 garnished or their bank accounts are frozen.
25 Similarly, tenants in housing court often first

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2 learn of the case against them when they come home
3 to find a notice of eviction tacked to their door.
4 As DCA testified just before, they did hold a
5 hearing last year, and the information that
6 resulted from that hearing was really revealing.
7 Industry insiders and agency owners and process
8 servers all testified, and they really confirmed
9 that sewer service is widespread and very
10 commonplace in these kinds of cases. Evan Cohen,
11 a managing attorney at DLS actually said that
12 consumer debt collection is a big area for sewer
13 service. Other people testified about paying
14 process servers as low as \$3 or \$5 per service,
15 and as you noted the law requires sometimes a
16 process server to attempt service three times.
17 Importantly, and also revealingly, people
18 testified from the industry that process servers
19 actually don't get paid if the service is not
20 completed, which really creates a big incentive
21 for improper service. Nothing dramatizes the
22 crisis of this problem that we're talking about in
23 New York more than the filing by the attorney
24 general in Fao [phonetic] vs. Forster and Garbus
25 this past summer, seeks to vacate 100,000 default

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2 judgments across New York State, which are tainted
3 by fraudulent claims of service by one single
4 process serving company. MFY urges the City
5 Council to pass Intro 1037, and require this,
6 require bonding of process server individuals and
7 agencies. I'd like to point out that New York
8 City has already adopted a similar bond
9 requirement for other areas, for other industries,
10 including laundries, home improvement contractors,
11 child support debt collection, vehicle towing
12 operators, and booting of motor vehicles. By
13 requiring a bond, Intro 1037 will drive out the
14 bad apples out of the industry. Surety companies
15 may require higher premiums and greater collateral
16 from unreliable process servers and process
17 serving agencies. Surety companies may even deny
18 coverage if the individual or agency is unable to
19 meet the surety company's professional standards.
20 These new standards will help deter people who
21 want to make a quick buck by entering the process
22 serving industry, undercutting honest process
23 servers by flouting the legal requirements for
24 service. There will also be a similar incentive
25 for people already in the industry to leave. The

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2 requirement of a surety bond will substantially
3 increase accountability in an industry in which
4 individuals and companies now routinely violate
5 the law, with virtually no penalty. In addition,
6 many of these individual process servers, we
7 believe, are misclassified as employees, or I'm
8 sorry, misclassified as independent contractors,
9 instead of employees of the agencies that hire
10 them. And as a result, they're denied employment
11 rights of a minimum wage, social security, other
12 protections, because of their improper
13 classification. So in the individual bonding
14 requirement under this bill, some of these abuses
15 will end because these low wage individuals will
16 not be able to obtain their own surety bond, and
17 they will have to work as employees of process
18 serving agencies that do obtain a surety bond. I
19 think it's also important to note that this bill
20 also requires process serving agencies to provide
21 their employees with information about their work,
22 as workers, including their rights under wage and
23 hour laws, and to provide annual trainings
24 regarding the laws pertaining to lawful service of
25 process. DCA testified earlier that they believe

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2 that it's the process serving agencies who should
3 be informing their agents about how to engage in
4 service, but that's actually not a requirement
5 under the law right now. Finally, we believe the
6 bill could be strengthened by making it easier for
7 injured victims of sewer service to recover
8 damages, which Intro 1037 will ensure are paid,
9 because of the new bonding requirement. And one
10 way to strengthen the bill is to create a private
11 right of action, which is similar to New York City
12 Administrative Code, Section 20-743.1, which
13 establishes a private right of action for
14 consumers who've been injured by failure of a tax
15 preparer to follow laws concerning refund
16 anticipation loans. It's a similar, it's similar
17 that individuals who have a potential for engaging
18 in negligence and harming New Yorkers, that
19 there's a repercussion by individual New Yorkers.
20 Another option is to authorize DCA to award treble
21 damages to people who are the victims of sewer
22 service, and a similar right for treble damages
23 exists for individuals who are victims of improper
24 home improvements. We know that the Committee
25 will be hearing, and has already heard, of other

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2 suggestion from other advocates and supporters of
3 this bill, and we support those suggestions as
4 well. In conclusion, MFY Legal Services urges the
5 adoption of Intro 1037. If it's enacted with the
6 strengthening amendments we propose, the Council
7 will have taken a dramatic step forward in
8 protecting New Yorkers from the harms of sewer
9 service, and ensuring that those individuals who
10 are still the victims of this practice, can be
11 compensated when they're harmed. Thank you.

12 COUNCIL MEMBER GARODNICK: Thank
13 you, Mr. Chairman, and first of all thanks to both
14 of you for the two reports, which essentially
15 spurred the legislation that we're considering
16 today, and the one that already passed through the
17 Council. It was an extraordinary job on your
18 part, and I want to say thank you to both Urban
19 Justice and MFY Legal Services. I understand from
20 both of you that you would like to see a private
21 right of action included in the bill. Let's just
22 talk about that for a second, so I understand what
23 precisely that would do, in the scenarios that
24 exist out there. We have the two types of process
25 serving entities, you have the individuals, and

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2 you have the agencies which may hire independent
3 contractors. Let's say, let's go back to the
4 hypothetical that I had presented to DCA. I got
5 and become a process server, and decide that in
6 order for me to make my, make a living, \$3 bucks
7 is really very difficult, and in order for me to
8 make enough dollars together in a day, I get a
9 sloppy, I don't really do the things that I'm
10 supposed to do, drop 'em in the sewer, whatever it
11 is, but don't do service. One of you is somebody
12 who I was supposed to serve process on. You find
13 yourself in a situation where there's a default
14 judgment entered against you, your assets are
15 frozen. Take us from there, what does a private
16 right of action do for you? Call me an
17 individual, you know, I don't work for an agency,
18 or I do work for an agency. Give me both of the
19 scenarios, and what sort of recovery, what sort of
20 vulnerability, why is it a deterrent for me to do
21 what I just did?

22 CAROLYN COFFEE: I think the
23 scenario's the same whether an individual or a
24 process serving agency. And right now, your
25 remedy, if you're sued, if you're served

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2 improperly, certainly you can go back to court and
3 try and undo any default judgment that was entered
4 against you. That is very hard for, a little bit
5 hard for people to do if you're not represented by
6 an attorney, but that's certainly, you know,
7 that's certainly your right to go back and do
8 that. Unfortunately, the process server who
9 didn't serve you correctly, and is the cause of
10 you not knowing about this case, and having to go
11 back to court and undo these wrongs, is not a
12 party to the lawsuit. And so, you don't have any
13 repercussion against that individual, for engaging
14 in improper service. A private right of action
15 would enable to you to go after that individual.
16 And importantly if this law is passed, there will
17 be, you know, because of the bonding requirement,
18 there will be a pool of money that you know that
19 you can, you can tap into in the event of a
20 successful suit.

21 HARVEY EPSTEIN: But also, think
22 about how this, the repercussions affected me.
23 Right? So, I got to pay my rent that day, and my
24 rent check bounces. And I also pay, you know, I
25 pay six bills on that day, 'cause that's what I

1 do, so there's, I, my, I have a credit card bill
2 that's now late, and there's fees and penalties as
3 you'll see with that. My rent check is now late,
4 my insurance is late. So, the bank's now charging
5 me \$300 for my late checks, my credit card
6 companies and my landlord's now charging me \$300
7 because I bounced the check, right? And then so
8 there are all these ramifications about not
9 knowing. Maybe it wasn't me, maybe there was no
10 debt, you know, we, our organizations and other
11 advocates, we find people all the time who face
12 these problems, who were just not the Jane Smith
13 that they sued. Our client lives in Queens, this
14 person was sued in The Bronx, just different
15 people. So there's potentially thousands of
16 dollars of actual damage that that person has to
17 face, that I have to face. There's nothing I can
18 do about it, there's no one really I can sue for
19 saying that's improper service. This allows me to
20 go sue that process server, saying, "This is what
21 you did to my life." And that's why a private
22 right of action's important. On top of then them
23 being encouraged not to do it, because we can sue
24 them, people who have actual harm can get a
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remedy, and that's what we need.

COUNCIL MEMBER GARODNICK: The bill right now does not have a private right of action, it does have the bonding requirement. Let me just pose to both of you what DCA said on the subject of the bonding requirement and get your response to it. Mr. Eiler said while requiring individual process servers and agencies to obtain bonds may appear at first blush to be an effective protective measure for consumers, we believe such a requirement is ineffective because it is based on the faulty premise that financial security for the payment of fines and the award of damages for consumers is needed. That's simply not the problem, particularly when noting that most consumers aren't even aware they've been the victim of sewer service. Now, well go ahead, just--

HARVEY EPSTEIN: The problem is they know they're the victim when they know they're the victim. They, it's hard to not know something in the abstract. So the time that you, your credit's destroyed, the time that you are, your bank accounts are frozen, the time that you

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2 lost your money, that's when you know you're the
3 victim. And the bond, while I think an important
4 step without the private right of action, because
5 it really will wean out some of the, I think the
6 \$3 process servers, what helps us is the bonds
7 allows us, or people who are the victims, to sue
8 the process server. Right? So, to say that the
9 bond doesn't add anything, I think is a total
10 mistake. The bond adds something, 'cause it
11 creates pool of money that's available, and the
12 bond also really creates a higher caliber of
13 people who can then become process servers.

14 'Cause you're right, you know, even though you're
15 a lawyer, you went to law school, you could be,
16 you know, just you know, recently, you know, to
17 New York, not know anything about the City, you,
18 over 18 years old, and decide to get a process
19 server's license, 'cause you have \$350 in your
20 pocket. That's it. No one's going to teach you
21 about the law, no one's going to teach about how
22 to serve, no one's going to teach you about that,
23 you know, you know, someone, someone, you may be
24 told, "Hey, you should read this," but there's no
25 obligation that you're literate. There's no

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2 obligation that you have to do anything except
3 fill out an application and give us \$350. So, you
4 don't know what the law is, you don't know how to
5 do anything, you're taking this job because you
6 can't get, find another career, and you don't want
7 to join a company, you know, you can go out there
8 for two years and serve process and, you know
9 what, you know, as long as OLM's going to hire
10 you, or a credit, a debt buyer's going to hire
11 you, then you're good to go. It seems like
12 there's got to be a way to do what you're trying
13 to do, to educate people up front, make sure
14 there's some quality control, and on the back end,
15 so we're able to sue them.

16 CAROLYN COFFEE: Yeah, and I would
17 just add that, I mean, as we've seen so far from
18 the testimony, there are several angles to this
19 problem. And discounting, you know, the bonding
20 requirement is not the issue, it's, you know, I
21 think, you know, not really the appropriate
22 response. You're, like the Council is trying to,
23 is trying to look at this issue in a creative way,
24 and the bonding requirement, as Mr. Epstein said,
25 will weed out some of these bad apples by

1 introducing this private element into the mix.

2 And so, you know, there may be no require--no need
3 to tap into the bond later on, to, you know, to
4 pay penalties or damages because, you know, the
5 deterrent effect will be great.

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7 COUNCIL MEMBER GARODNICK: DCA made
8 it very clear that the \$3, the \$3 payment for
9 service is like buying, I think his direct quote
10 was, "is like buying sewer service," you are
11 buying sewer service. And that if you are paying
12 \$3 for service, you are, in response to my
13 question about whether that meant you at best
14 apathetic about whether a process is actually
15 served, DCA said, "Yes, that is correct." Explain
16 to us a in a little greater detail how this bond
17 weeds out the \$3 process server, and its problems.

18 CAROLYN COFFEE: I think there's
19 some testimony being submitted by some law
20 professors who have a little more experience in
21 the insurance industry that I do, but I think
22 logically speaking, if I was a bonding company,
23 and I was, was looking to see, you know, who I was
24 going to bond, and I looked at how people are
25 paid, and some people are paid \$3 for service,

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2 and, you know, the process serving agencies in
3 those kinds of cases, as the testimony at the DCA
4 hearing revealed, are often paid about \$15 by the
5 collection law firms, to effect service, and then
6 they pay their servers the \$3; whereas, in other,
7 in other cases, the standard is about \$45. So, if
8 you have this great discrepancy in terms of how
9 people are being paid, I would think that that
10 would set off a light bulb as to what kind of
11 quality you're getting as a result. And then
12 certainly, if you were to examine the rate of
13 default judgments in cases where, in these debt
14 collection cases, and these housing cases, where
15 the default judgments are so great, and people are
16 being paid so little, I don't think it's that hard
17 to see that, you know, maybe those, some of those
18 individuals actually shouldn't be, you know, are
19 very risky and shouldn't actually be bonded.

20 HARVEY EPSTEIN: The only thing I
21 would want to add is what is the draw of the
22 bonding agency? Theirs is to save their bond.
23 They're not going to give someone a bond that
24 they're going to lose all the money from. They're
25 assuming that they're going to give someone a

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2 \$10,000 bond that's going to cost them \$300 a year
3 to pay for the bond, because they're a low risk.
4 If they're a high risk, they're either going to
5 charge them a lot for the bond, or not issue a
6 bond. So what this does is says, "Well, for the
7 \$3 process servers, that's a pretty high risk,
8 especially if DCA's going to sue or if there's a
9 private right of action. If it's a \$45 service,
10 that's actually likely to happen, because that's,
11 you know, up to three trips, you know, for \$45,
12 you might actually do two to three trips. For \$3,
13 at best you're mailing something, you're not going
14 into the neighborhood at all. So there's, you
15 know, these bonding entities are making business,
16 they're making business judgments, and this will
17 force them to make a smart business judgment,
18 which will help us wean out the bad apples.

19 COUNCIL MEMBER GARODNICK: Thanks.
20 My last question here is on the subject of filing
21 logs to DCA, ever, or every year, as Mr. Epstein
22 proposed in his testimony. Would that actually do
23 anything? We heard from them that in order for
24 logs to be effective, you need somebody to either
25 slog through 'em, and compare them to court

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2 documents, or they're really not serving any real
3 purpose unless there is a point of dispute. Put a
4 little, put a little mean on the bones on the
5 subject of filing the logs with DCA.

6 CAROLYN COFFEE: I think it's true
7 that, you know, it's possible to look at someone's
8 log and certainly on the face of it, you know,
9 there's service every 15 minutes, the service is
10 in particular neighborhoods, you know, and maybe
11 it seems plausible. But I think that, I mean, I
12 know from personal experience, I've looked at some
13 log books at traverse hearings where, where
14 service was contested. And the entire log book
15 was written in one color pen, and contained
16 notations that the process server could not
17 recall, you know, what those abbreviations were
18 actually for. And so, you know, there are some
19 questions that can be raised by opening up the log
20 books to scrutiny, and that would certainly, I
21 think, I think there's definitely information you
22 can get from having the opportunity to evaluate
23 the log books.

24 HARVEY EPSTEIN: This thing I want
25 to add is, think about you being the process

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2 server. If you have no obligation to file that
3 log with anyone, ever, what is that log, except
4 your personal information. You, sometimes you
5 bring it to court, you never leave it that, you
6 take it back. So, if you're an ethical person,
7 it's a true and accurate log. If you're not such
8 an ethical person, you can somehow doctor it along
9 the way. If you have to file that log every year
10 with the Department of Consumer Affairs, then you
11 have some record of what you did on that date.
12 That's a complete record, that's not a modified
13 document, that's a final document. So one is they
14 know there's oversight. So if you do say, you
15 know, you do your traverse hearing, Ms. Coffee
16 said, a year later, well that, that's already on
17 record, you can't really modify that. If you're
18 concerned that there might be more oversight, well
19 you're filing that, you're concerned about it.
20 So, as the process server yourself, I think you
21 put yourself on a higher standard if you know you
22 have to file that log with a government agency.
23 You know you might lose your license if you alter
24 it. You know there's, someone might actually look
25 at it, and you know what, they might get interns

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2 once in a while to pull a log every couple
3 decades, and look in the court files to see if
4 they're complying. I think that enough is an
5 obligation. I as a lawyer have an obligation to
6 do twelve CLE credits a year. No one says to me,
7 you know, prove that you did your twelve CLE
8 credits, but I know I have an obligation to do it,
9 so I know that I had to file it, I had the stuff
10 available. So, it's, it's like taking this, that,
11 the next step. If you have to file it, it puts
12 you no a higher level of review, because someone's
13 double checking what you did, or someone could
14 double check what you did. You're putting your
15 pen saying, "This is my information, I'm trying to
16 be, I have to be honest here because someone might
17 look." For us, who have an ethical obligation to
18 do it already, great; for someone who doesn't, we
19 need to bring up that standard.

20 COUNCIL MEMBER GARODNICK: Well,
21 I'd certainly add a minimum you're locking it in,
22 it's not something which could be altered at any
23 point, it's fled somewhere and it's frankly
24 shocking to me that there are not already any
25 oversight rules for those log books worth

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2 anything. And that was very, very clear from when
3 we heard from the Administration. So, I'll leave
4 it there. Thank you both very much for your hard
5 work on this issue.

6 CHAIRPERSON COMRIE: Thank you.
7 Thank you both for coming. Council Member
8 Garodnick was pretty detailed, so I won't go
9 through anything else. And we're kind of pressed
10 for time. Chad Marlow from the State Professional
11 Process Servers Association. [pause] Good
12 morning, sir. Good to see you again.

13 CHAD MARLOW: Good morning, Mr.
14 Chairman, it's very good to see you again, too.

15 CHAIRPERSON COMRIE: I see you're
16 wearing a new hat.

17 CHAD MARLOW: I am. I am. It's,
18 that old hat was getting a little worn out.

19 CHAIRPERSON COMRIE: Okay.

20 CHAD MARLOW: [laughs] Good
21 morning, Mr. Chairman, and good morning to you,
22 Council Member Garodnick. My name is Chad Marlow,
23 and I am President of the Public Advocacy Group,
24 and it's a great pleasure to be testifying before
25 this Committee again. I am very pleased to be

1 here today representing both the New York State
2 Professional Process Servers Association, the
3 National Association of Professional Process
4 Servers, and their members throughout the state
5 and nation. Let me begin my testimony with a
6 basic observation regarding Intro 1037. This
7 Committee would be hard pressed to find two
8 organizations more supportive of the motives
9 behind this bill than the NYSPPSA and NAPPS. We
10 wholeheartedly support the goal of protecting
11 defendants, especially in debt service cases, from
12 unscrupulous process servers and process serving
13 agencies, who are willing to illegally in engage
14 in process service, in sewer service. Sewer
15 service is a term that defines the practice of
16 obtaining default judgments against defendants who
17 have never been notified that they were being
18 served. Specifically, this occurs when a process
19 server lies to a court under oath by saying that
20 he personally served a defendant with process when
21 he knows such service was never made. It then
22 appears to the court that the defendant has chosen
23 not to contest the lawsuit, and an automatic
24 judgment is rendered against the defendant. This
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2 practice is abhorrent to the thousands of honest,
3 hardworking individuals who make their living in
4 the process serving industry, both in New York
5 State and nationwide. Each time a case of sewer
6 service occurs, its victim is deprived of the
7 right to a fair hearing, the proper operation of
8 the court system is compromised, and the
9 reputation of the process serving industry is
10 damaged. Needless to say, this past summer the
11 entire New York State legal establishment was
12 rocked when New York State Attorney General Andrew
13 Cuomo sought to have approximately 100,000 default
14 judgments issued in debt collection cases thrown
15 out due to improper service. And even though the
16 illegal scheme was linked to one specific Long
17 Island based process serving agency, American
18 Legal Process, the reputation of the entire
19 process serving industry was damaged in a way that
20 will take years, if not decades, to fully recover
21 from. The plain and simple fact is that my
22 clients are victims of ALP's illegal scheme, too.
23 Not surprisingly, then, they believe no penalty is
24 too harsh for those who perpetrate this type of
25 fraud. Above all else, the NYSPPSA and NAPPS want

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2 to see laws passed that are so strong, that they
3 will scare off anyone who might consider engaging
4 in sewer service in the future. Deterrents
5 created through the threat of substantial criminal
6 penalties is the key to addressing this problem.
7 That brings us to where the theoretical meets the
8 practical. Does Intro 1037 help to achieve the
9 goal of significantly strengthening the deterrents
10 against sewer service? Or, despite its good
11 intentions, does Intro 1037 inadvertently decrease
12 existing deterrents, without adding new ones?
13 Unfortunately, because of its rather significant
14 shortcomings, if Intro 1037 becomes law, it would
15 not be part of the solution, but rather part of
16 the problem. The NYSPPSA and NAPPS are prepared
17 to fight tooth and nail for any legislation that
18 will prevent the few bad apples in our industry
19 from once again spoiling the bunch. That being
20 said, we cannot support legislation whose greatest
21 achievement would be to create a sense of false
22 security when in fact it does nothing
23 consequential to prevent New Yorkers from becoming
24 victims of sewer service. In the interests of
25 time, I will not be providing detailed testimony

1
2 on all the elements of Intro 1037 about which my
3 clients have an opinion; rather, I'll focus on the
4 most important points and will leave it to the
5 bill memorandum I submitted along with my
6 testimony to fill in the gaps. Let me begin by
7 discussing the single most trouble part of Intro
8 1037: the bonding requirements found in Section
9 III. In short, Section III's bonding requirements
10 would require individual process servers to
11 purchase a \$10,000 surety bond, and process
12 serving agencies to purchase \$100,000 surety bond.
13 The goal of these bonds, I would assume, is to
14 guarantee some degree of financial compensation is
15 available to future victims of sewer service.
16 This approach, however, has very three very
17 significant problems. First, the surety bond
18 requirement is focused on providing a financial
19 remedy to victims of sewer service, but does
20 nothing to deter sewer service in the first place.
21 Second, the bonding requirement is insufficient
22 even to its presumed task. Had the infamous ALP
23 obtained \$100,000 surety bond per the requirement
24 of its bill, each of its victims would've been
25 entitled to \$1 in compensation. That would not

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2 even pay the victims subway fare to collect their
3 checks. The third problem with the bonding
4 requirement is far and away its most serious.
5 Surety bonds such as those required by this
6 proposed new Section are cheap. They generally
7 run about \$80 to \$100 per \$10,000 of bonding. As
8 such, Intro 1037 would not only permit, but would
9 require all individual process servers, for only
10 \$80 to \$100, and all process serving agencies, for
11 only \$800 to \$1,000, to purchase the equivalent of
12 a get-out-jail-free card for civil lawsuits based
13 on sewer service. The bad actors in the process
14 serving industry, which unfortunately do exist,
15 will welcome this first time opportunity to
16 purchase surety bonds which they would then view
17 as civil lawsuit insurance to indemnify them
18 against court imposed damages. This would move
19 the ball in precisely the opposite direction it
20 should be heading. Instead of creating greater
21 deterrents to bad actions by unscrupulous process
22 servers, Intro 1037 would eliminate an important
23 disincentive to engaging in improper service, and
24 in so doing, would actually promote bad behavior.
25 There is no doubt that a process server who lets

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2 say engages in a sewer service for a \$5,000 debt
3 collection case will sleep far more soundly at
4 night knowing, and I say this with apologies to
5 State Farm, that like a good neighbor, Intro
6 1037's surety bonds will be there. The goal of
7 protecting the public and deterring bad actors who
8 might otherwise engage in improper service, is
9 better served by increasing the penalties
10 applicable to those who knowingly engage in
11 improper service. Presently, the New York State
12 Attorney General can seek, and New York City based
13 courts can assess only \$1,000 civil fine for such
14 violations, an amount which is clearly inadequate.
15 Although those who engage in improper service may
16 also face criminal penalties for perjury, as well
17 as civil actions by aggrieved parties, the NYSPPSA
18 and NAPPS strongly agree with the sponsors of this
19 bill, that this level of deterrence must be
20 increased. Does that mean we want higher fines
21 for knowingly engaging in improper service? Yes,
22 it does, much higher. Does it mean that we want
23 these people to serve jail time? You bet. For
24 all we care you can lock these people up and throw
25 away the key. Does that mean we want them to lose

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2 their process serving licenses immediately and
3 forever? Absolutely. One strike and these
4 lawbreakers should be out of the industry for
5 good. Of course, these new stiff penalties should
6 only apply to those who intentionally engage in
7 improper service. As State law currently
8 recognizes, it does not serve the public interest
9 to severely punish those who make an innocent
10 mistake. Intro 1037 can accomplish its important
11 goals by eliminating its detrimental bonding
12 requirements and replacing them with tough
13 penalties that will unquestionably deter future
14 bad acts. Should the City Council's attorneys
15 conclude that the City of New York does not have
16 the authority under the State constitution to
17 increase penalties against those who engage in
18 sewer service, the NYSPPSA and NAPPS are willing
19 to join the sponsors of this bill in Albany to
20 push for legislation that will enact these tougher
21 penalties on a statewide level. And if we can go
22 before the State Legislature armed with a City
23 Council resolution calling for tougher action, all
24 the better. To paraphrase the great Harvey Milk,
25 I know you're angry, we're angry, but we cannot

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2 allow this anger to cloud our judgment. It is far
3 better to secure an effective law from a
4 legislative body empowered to adopt the
5 legislation we need, than to have the City Council
6 pass a law that provides no increased deterrent to
7 bad behavior, or worse still, undermines one of
8 the few deterrents that currently exist. The next
9 section I would like to discuss is the provisions
10 in Section I and II of Intro 1037, that require
11 any individual process server or process serving
12 agency, who assigns or distributes process in New
13 York City, to hold a New York City process
14 servers' license. And thereby submit to the
15 jurisdiction of the New York City Department of
16 Consumer Affairs. Let me start with the part that
17 we agree with. We have no objection to requiring
18 any person or agency who actually distributes
19 process within New York City to hold a New York
20 City process serving license. We also have no
21 objection to requiring any agency whose business
22 is physically located in New York City to hold
23 such a license. Where we do have a problem, and I
24 want to stress that this is a serious concern of
25 process serving agencies across this country, a

1 fact I know because I am representing them there
2 today, is with the requirement that any agency
3 that assigns process, that is eventually served in
4 New York City, must also hold a New York City
5 process server's license. The extension of the
6 licensing requirement to those outside the City
7 who assign process, would greatly expand the scope
8 of New York City's current process serving license
9 law. Presently no non-New York City agencies hold
10 such a license. The reach of this amendment is of
11 the greatest concern when an agency has no other
12 connection to New York City. It is adequate for
13 the purposes of protecting New Yorkers, to ensure
14 that a license is held by all process serving
15 agencies located in the City of New York, as well
16 as any and all businesses and individuals who
17 actually serve process within the City. Let me
18 explain why this expansion is so troubling. In
19 modern times, process serving is frequently a
20 national undertaking. For example, a process
21 serving agency in Atlanta that needs to serve
22 process in Manhattan, would hire an Albany based
23 clearinghouse agency to handle the service of
24 process within the State of New York. That
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2 clearinghouse would in turn hire a downstate Long
3 Island agency to oversee the service of process in
4 New York City. Finally, the Long Island agency
5 would hire a New York City based process server to
6 actually serve process in Manhattan. Requiring
7 the Atlanta, Albany and Long Island agencies to
8 hold New York City licenses, and from time to time
9 to physically appear before the Department of
10 Consumer Affairs in New York City for filings,
11 record keeping reviews, to challenge alleged
12 violations and to meet other requirements, is
13 unnecessary, overly burdensome, and might not
14 survive a court challenge. Further, if all
15 process serving agencies that assign service on a
16 national level, which constitutes most agencies,
17 are forced to pay \$500 for licenses in New York
18 City, other cities would likely follow suit with
19 similar legislation, either because they think
20 licensing is a good idea, to gain a new source of
21 revenue, primarily from out of state sources, or
22 in retaliation against New York City, the, "if
23 you're going to tax our businesses, we sure as
24 heck are going to tax yours" response. If enough
25 localities adopt similar legislation, it would

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2 dramatically increase the cost of serving process
3 for consumers, and would drive innumerable
4 agencies out of business. Presently, several
5 states, counties and one city other than New York,
6 require the licensing of process servers. A list
7 of those entities is attached as Appendix A to the
8 bill memorandum I provided you. Not one of these
9 states, counties or cities extends its licensure
10 requirement to companies and individuals who are
11 not physically located in or directly serve
12 process within their jurisdictions. By levying
13 this fee, which is a tax, against businesses that
14 neither operate in nor do business in New York
15 City, this body would create a dangerous precedent
16 that could not only harm the process serving
17 industry, but could be extended to harm other
18 regulated industries as well. Further, such a
19 broad extension of the City's licensing powers
20 beyond the borders of New York City may violate
21 the City's statutory authority under the laws and
22 constitutions of the United States and New York
23 State. Let me conclude with a few lightning round
24 observations on other important parts of the bill.
25 Again, I'd refer you to my bill memorandum for

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2 greater details regarding this testimony. Section
3 three of the bill contains a provision that would
4 require every process server to complete an annual
5 training course on the laws and regulations that
6 govern the service of process. The NYSPPSA and
7 NAPPS strongly support this new requirement.
8 NYSPPSA presently offers a six hour training
9 course, and hundred question test that process
10 servers must take and pass to be designated a
11 certified process server by the Association. We
12 support requiring all persons seeking a process
13 server's license to complete this level of
14 rigorous training and testing before they receive
15 a license. Continuing education requirements for
16 experienced servers should be mandated as well.
17 Section III of the bill also contains a provision
18 that would require every process server and
19 process serving agency to retain records of every
20 process served for no less than seven years. We
21 favor two changes to this provision. First, we
22 would request that the law explicitly state that
23 the records could be kept in paper or electronic
24 form, and I would note parenthetically that if
25 kept in electronic form, that would actually make

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2 it easier to forward those records upon request,
3 or as a matter of process to DCA or any other
4 agency who wants to see them. Second, we believe
5 that seven years is an overly burdensome amount of
6 time for a business or individual to have to
7 maintain records of every service of--of every
8 process it serves. Seven years is longer than
9 most statute of limitations periods and far
10 exceeds standard business recordkeeping
11 requirements and practices, including the two year
12 record retention requirement for process servers
13 under state law. We would be willing to support
14 an expanded three year requirement that increases
15 the State standard by 50 percent, without placing
16 an overly burdensome recordkeeping requirement on
17 process servers and agencies. Finally, we are
18 concerned about the provision in Section III that
19 states, "In each and every suit or prosecution
20 arising out of this subchapter, it shall be
21 presumed that an employee of the agency is acting
22 in the course of his or her employment when
23 serving process assigned or distributed by the
24 applicant. The laws governing vicarious liability
25 and the burdens associated therewith, have been

1 well developed by the courts over the course of
2 centuries. It is neither necessary nor prudent
3 for this bill to create a total presumption that
4 an agency employee is acting in the course of his
5 employment for the violations of this chapter.
6 Certain acts, such as those involving violence,
7 are never authorized by process serving agencies,
8 yet even in such an extreme case, this provision
9 would place the often impossible burden on
10 agencies of having to prove a negative, such as
11 proving that they did not give permission for
12 their server to use violence while serving
13 process. A quick note, by the way, on the
14 repeated \$3 payment requirement that's been coming
15 up in this testimony. I feel obligated to come
16 out in defense of the--there's only one
17 institution that pays \$3 for service of process,
18 it's insufficient, it's inappropriate. But I feel
19 the need to defend it, because I don't think it's
20 appropriate to suggest that the City of New York is
21 trying to intentionally have people engage in
22 sewer service. I want to repeat that again. The
23 only institution that pays \$3 for service of
24 process is the City of New York. The standard
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2 that goes--standard is around \$5, and it's much
3 more comprehensive, and if you want me to explain
4 it during your questions, I would be happy to, but
5 it's not nearly the way it's been presented to the
6 Committee so far. So I would like to conclude by
7 thanking the Committee for its time and for this
8 opportunity to testify today. I would also like
9 to encourage the Committee not to give in to the
10 fervor presently surrounding this issue by rushing
11 to pass an imprudent bill, or one that time,
12 effort and deliberation could make significantly
13 better. New Yorkers will not benefit from
14 whatever symbolic help passing any law affecting
15 process servers would offer. What they need and
16 what the process serving industry needs, is the
17 real help that comes from passing the right law in
18 the right form. I'd be happy to answer questions
19 the Committee has at this time.

20 CHAIRPERSON COMRIE: Okay, can you
21 explain the \$3, how did you come to the conclusion
22 that that's the City that's charging the \$3 fee,
23 and not any particular process server agency?

24 CHAD MARLOW: Yeah, it's
25 essentially for--and I think the Committee is

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2 right that the service of process kind of falls
3 into two categories, and I think the DCA's
4 explanation that you have the clunkers and the
5 Cadillacs is actually not that far off. The
6 Cadillacs being regular suits, the clunkers being
7 these debt, these debt collection cases. In debt
8 collection cases, it is the standard across the
9 industry to pay \$5 for each service of process.
10 The difference is New York City has RFPs, for
11 someone who wants to do it. So it actually
12 encourages the most unscrupulous people who are
13 willing to do it on the cheapest level, to apply
14 to New York City and say, "I'll do it for \$4.50,
15 I'll do it for \$4, I'll do it for \$3." And that's
16 how New York City ends up getting the cheapest
17 rate of service in the City of New York. That's
18 well known to the industry. In terms of the way
19 it works amongst the rest of the areas, with \$5
20 and--And I have nothing but the highest esteem for
21 MFY Legal Services and the Urban Justice Center.
22 But the suggestion that these people are somehow,
23 one, because they make very little money, which is
24 not accurate, but even if they did, that they are
25 somehow therefore entitled to break the law, I

1 think is dead wrong. There are a lot of
2 hardworking New Yorkers who make minimum wage, who
3 follow the laws to the T, and I don't think that
4 you can say paying them minimum wage, which may or
5 may not be sufficient in New York, is an
6 invitation to break laws. But in the case of
7 process servers, what happens is all of these
8 processes come into a process serving agency, and
9 they're divided up by small areas, typically zip
10 codes, sometimes more than one. You know, in the
11 case of the Empire State Building, I know it has
12 its own zip code, so that would not have its own.
13 But they're then gathered up so you may get 100 or
14 200 processes to be served within a very small
15 geographical area. Once the case is filed, the
16 process server needs, they have 120 days to
17 actually serve process. So there's no rush. The
18 process server will be sent into the neighborhood,
19 which he or she knows very well, and they'll go up
20 and down the blocks trying to serve these
21 processes. If they're getting paid \$5 a pop and
22 they serve 100, which is a very reasonable amount
23 in a week, that's \$500 a week. That's well above
24 the minimum wage in New York City. If they fail
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2 to serve some this week, that's okay, they'll just
3 lop them in with next week's. So, these people
4 are actually not struggling, they're not
5 suffering, they're not given the unpalatable
6 choice between breaking the law and being able to
7 earn a living wage. That's simply not accurate.
8 So, if that's not the problem, is the problem
9 isn't that they are being driven by lack of income
10 to break the law, then I think you have to
11 conclude that they are being driven by greed, just
12 as the process serving agencies who may encourage
13 them to do this are being driven by greed, just as
14 the law firms who may encourage them to do this
15 are being driven by greed. And the only way to
16 respond to that is with the toughest penalties
17 imaginable, against these people. So that it just
18 isn't worth it, to take the risk.

19 CHAIRPERSON COMRIE: I'm just
20 inter--I'm impressed with your passion and the
21 desire to try to create a, a higher playing field
22 for people in your industry, but it's just--so I
23 would say that when you break this down to all of
24 the, to these different process serving companies,
25 that come up with the--that come up with the idea

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2 that to do this type of flooding of just--to come
3 up with this idea that would, they are now--I
4 don't know, I'm not phrasing this right. How
5 would you fix that solution, then? What would you
6 say? Where would you stop the process that, from
7 where it is now, so that we would not have this
8 lower set of service and this negative type of
9 atmosphere where they're going to the lowest
10 common denominator to try to--?

11 CHAD MARLOW: Right. I appreciate
12 that question, Mr. Chairman. First of all,
13 obviously, I wouldn't do anything like create an
14 insurance system that would protect them against
15 penalties, but I do think things like increased
16 fines, and literally when I say no fine is too
17 high, I'm sure that will be the reasoned judgment
18 of the City Council, but we're very upset, so we
19 feel like a million dollars is fine. I mean,
20 that's how upset we are. Jail time.

21 CHAIRPERSON COMRIE: But you would
22 fine it against the individual process server or
23 the process agency?

24 CHAD MARLOW: It depends how this
25 is done. Anyone, if this is an act of an

1 individual, if it's a lazy process server, then
2 yes, it's against the process server. But I would
3 suspect, and I would like to just say that this is
4 not an accusation, I don't know the cases of the
5 ALP case, but with 100,000 cases, I would suspect
6 that this is in all likelihood a conspiracy
7 between the law firms, the process serving
8 agencies, and certain process servers. I think
9 anyone who is knowingly engaged in the unlawful
10 process serving, or in encouraging it, should be
11 subject to these penalties. There should
12 certainly be no hesitation to go after every bad
13 actor, and to go after them with quite the hammer.

14
15 CHAIRPERSON COMRIE: But isn't it
16 true that a lot of these process servers that are
17 putting out the complaints are putting it out to
18 people that they don't want to engage directly?
19 Or they, or they're taking on debts that they're
20 not even sure are still current? So, how do you--

21 CHAD MARLOW: Well, it's not, it's--
22 -it's not the, it's not the role of the process
23 server to analyze the quality of the case they're
24 serving.

25 CHAIRPERSON COMRIE: Mhm.

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2 CHAD MARLOW: It is their
3 obligation to engage in proper service. So, if
4 you are say a shy and retiring type, I wouldn't
5 suggest becoming a process server. But it is your
6 obligation--things like nail and mail cannot be
7 done until personal service is tried repeatedly.
8 So it's not like a process server who's following
9 the law. And Councilman Garodnick, your point
10 about education could not be taken more strongly.
11 You know, the situation as I was sitting there and
12 you describing you entering into the process
13 serving agency, I said, "Oh, my god, you know,
14 please stay in the City Council." [laughs] If--
15 they don't even know, a lot of them don't even
16 know the rules. Our Association forces them to
17 not only go through six hours of training but pass
18 100 question test. This is what these people
19 should do, and then they would know, "I have to
20 serve this in person, I have to try three times.
21 If I can't serve the individual, I can serve an
22 adult at their last known residence. If I try
23 that three times and it fails, then I can do nail
24 and mail." But yes, are there going to be people
25 out there that are lazy and violate the rules?

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2 Yes. But I find a hard time imagining any
3 industry in which there are not people who are
4 unscrupulous and will break the rules. What you
5 do, I think as a legislative body to the extent
6 you're empowered to do it, is seek to punish the
7 bad apples as strictly as you can in an attempt to
8 create deterrence against that. I do want to
9 point out that the suggestion that this is a
10 widespread phenomenon within the industry, from a
11 perspective of the victims, it is. Because if it
12 happens to you, that's widespread enough. But as
13 a practical matter, there is not, our industry is
14 not made up of cheats and thieves and people
15 trying to turn a quick buck. They go out there,
16 they earn a living, some of them earn a very good
17 living as process servers, and they want to follow
18 the law. So, on an annual basis, about 400,000
19 debt collection cases, index numbers, are obtained
20 in New York City alone, from the civil courts in
21 New York City. I actually was told that the New
22 York--largely in part due to that, the New York
23 City civil court actually gives out more index
24 numbers than the court system of the State of
25 California. So that's a very large number. Of

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2 that, over the period of time, they have found one
3 ridiculously unscrupulous agency who engaged in a
4 conspiracy to defraud people, and caught 100,000
5 of them, and that's terrible. But in the big
6 picture, you're not dealing with an industry where
7 50 percent of the people are thieves, you're
8 dealing with an industry that probably has the
9 same problem with people who break the law as any
10 other industry. Where our industry is different
11 is there's not enough deterrence right now. In
12 other industries, there's much greater deterrence,
13 in our industry there isn't. And that's where the
14 fix has to come.

15 CHAIRPERSON COMRIE: How long has
16 your Association been organized?

17 CHAD MARLOW: I think, I'm hard
18 pressed to give you that number, I know it's over
19 a decade, 'cause they've told me, told me stories
20 that seem to go back some period of time. But
21 the, they were also a founding member of NAPPS, so
22 I--if memory serves, I think it's around 18 years.
23 But I could provide that information to the
24 Committee if it would like.

25 CHAIRPERSON COMRIE: Okay. And

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2 your inferring that the--the agency or the company
3 that was, that's now under indictment by the
4 attorney general is not a member of your
5 Association?

6 CHAD MARLOW: I--

7 CHAIRPERSON COMRIE: Anymore.

8 CHAD MARLOW: I may have been
9 inferring it, let me be specific, they have, they
10 are not, nor have they ever been, a member of our
11 Association.

12 CHAIRPERSON COMRIE: Okay. And did
13 your Association attend the hearings that were
14 held by the Department of Consumer Affairs last
15 year?

16 CHAD MARLOW: Yes, they did.

17 CHAIRPERSON COMRIE: And they, did
18 they come up with some suggestions and some of
19 these ideas that you spoke about today?

20 CHAD MARLOW: Not at the time, that
21 was kind of a quick hearing, and they, there, they
22 more came into testify about how the industry
23 operates the problem, and the fact that they need
24 help. We've been working on trying to be more
25 specific, because I, you know, I generally don't

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2 appreciate, and I'm sure the Committee doesn't
3 appreciate, when an Association comes in and says,
4 you know, "There's problems in our industry, fix
5 them, but incidentally we don't like your fixes."
6 I mean, that's not helpful. So, we wanted to try
7 to see what we could do come up--

8 CHAIRPERSON COMRIE: Well, that's
9 kind of what you're saying today, in part.

10 CHAD MARLOW: No, it's not, Mr.
11 Chairman, in all due respect, I'm talking about
12 much tougher civil penalties, I'm talking about
13 jail time, I'm talking about license forfeiture.
14 All of these things are not in there.
15 Incidentally, the--I don't believe that the bill
16 has to have a private right of action, I think
17 that, I think perjury, theft, conspiracy to commit
18 theft, there's also a general principal in the law
19 that when a criminal penalty is broken, the party
20 to be protected by that law gains a private right
21 of action from that rule. That being said, I
22 would be completely in favor, in the industry, be
23 completely in favor of a private right of action.
24 Treble damages? Please. Please, treble damages.
25 We are very serious about preventing these people

1 from ruining the reputation of our industry. So,
2 I congratulate MFY and the Urban Justice Center
3 for that suggestion, it's great, but this is where
4 we have to go. The idea of creating bonding a
5 requirement, it just, the risk there, I--we know
6 how these people think and operate. It'll,
7 they'll view it as insurance. And the idea that
8 these surety companies will raise their rates,
9 sure they will. If I go out tomorrow, I don't own
10 a car, but so hypothetically, I go out tomorrow
11 and I get in a car accident, my insurance company
12 might raise my rates. But you know what? I'll be
13 driving my car the next day. And if it's \$80 to
14 \$100 today, and the surety company goes, "You're a
15 risk, actually. We're going to make it \$350," but
16 I'm planning to engage in sewer service? I'd pay
17 the \$350. Because if I, these are not
18 unintentional mistakes, these are knowing
19 mistakes. So, if I know I'm going to engage in
20 sewer service, \$80 to \$100 is a bargain, but yeah,
21 I'd pay \$300-\$400-\$500 in case the suit comes up,
22 'cause I know I'm breaking the law. So, that's
23 not, I don't think that's particularly helpful.
24 But some of these other suggestions I think are,
25

1 and we'd be enthusiastic about supporting them.

2 CHAIRPERSON COMRIE: Okay. Well, I
3 appreciate you coming. I do have other questions,
4 but we're pressed for time. Council Member
5 Garodnick has some questions.

6 COUNCIL MEMBER GARODNICK: Thank
7 you, again, Mr. Chairman. And Mr. Marlow, thank
8 you for the very articulate testimony, and also
9 congratulations on being the very first person in
10 City Council history to either quote or paraphrase
11 both State Farm Insurance and Harvey Milk in the
12 same testimony.

13 CHAD MARLOW: Yes, thank you, Mr.
14 Council Member, I really appreciate [laughs]

15 COUNCIL MEMBER GARODNICK: Let me--
16 Let me understand a little bit about the New York
17 State Professional Process Service Association and
18 the National Association of Professional Process
19 Servers. This is, these are industry groups.

20 CHAD MARLOW: Correct.

21 COUNCIL MEMBER GARODNICK: Is there
22 any distinction between them as to who they
23 represent?

24 CHAD MARLOW: Yes.

2 COUNCIL MEMBER GARODNICK: Tell us.

3 CHAD MARLOW: The New York State
4 Professional Process Servers Association just
5 represents individuals and agencies within the
6 State of New York. NAPPS represents, NAPPS is
7 actually located in Oregon, it has a primary
8 functional office in Georgia, and it represents
9 companies throughout the country. Which is why--
10 and the fact that they've chosen to get involved,
11 Council Member Garodnick, really does provide
12 proof of how concerned they are about the second
13 issue I discussed, which is the broad spread
14 licensing. You know, the idea that someone in
15 Montanan now has to go out and get a New York City
16 process serving license. They think there may be
17 an avalanche, and they're terrible concerned. And
18 what they do is they, NAPPS is actually made up of
19 people like, I think they call themselves Nips, I
20 don't, I think there's a vowel missing, but the
21 New York organization, the Associations throughout
22 the country, come together and they, they are
23 NAPPS. So, it's a national organization.

24 COUNCIL MEMBER GARODNICK: Okay.

25 And the New York State Professional Process

1
2 Service Association, they have member who are
3 licensed in New York City.

4 CHAD MARLOW: Yes.

5 COUNCIL MEMBER GARODNICK: Okay.
6 You noted in your comment that a \$3 payment for
7 process server isn't sufficient. And I heard you
8 right, when you said that.

9 CHAD MARLOW: Yes.

10 COUNCIL MEMBER GARODNICK: And you
11 also heard DCA come in and say that \$3 is like
12 buying sewer service. You heard that, right?

13 CHAD MARLOW: I did hear that, yes.

14 COUNCIL MEMBER GARODNICK: Okay.
15 Now, do you think \$5 actually deals with that
16 concern sufficiently? Or do you think that \$5
17 itself is also insufficient?

18 CHAD MARLOW: Well, I do think \$5
19 is sufficient. Again--

20 COUNCIL MEMBER GARODNICK: Is
21 sufficient?

22 CHAD MARLOW: Is sufficient. And
23 the reason why again is because process servers
24 are not going to go to an agency--and again, these
25 debt buyers don't go to individual process

1 servers, they go to an agency, they go to the
2 process servers. If a process serving agency were
3 to say to, let's assume you go into the industry,
4 they were to day, "Okay, Dan, for your district,
5 I'm going to offer you five processes to serve."
6 They're all over the place, so if you server them
7 and you get them all done, you've got \$25 in your
8 pocket. You, and any other person's going to say,
9 "No, I'm not going to do that. I'm traveling all
10 over the place, that's a big waste of time," and
11 that doesn't happen. What they do say is, "We've
12 got 100, 150, 200 that need to be served in your
13 area," and with 400,000 being filed a year, I
14 assure you that these bulk offers are, happen
15 every week, every agency. So they say to you, "I
16 got 100 for you this week," that's \$500. "I got
17 200," that's \$1000. That's well above the minimum
18 wage for a week, from New York City's minimum
19 wage. So, I do think that's sufficient. Now, the
20 one thing I would add is, obviously as you
21 understand there's a rub here. We talk a lot in
22 this testimony, and I don't want to, to kind of
23 mince words, but we talk about consumers.
24 Obviously, the consumers here are the debt buyers,

1 not the defendants. The defendants are paying the
2 process servers anything. The concern is you
3 don't want to raise the rate so high that you end
4 up making it too expensive to collect these case,
5 'cause what does that do? It shrinks consumer
6 credit, because the credit card companies are
7 getting defaulted on. They're not going to extend
8 credit to New Yorkers if they know that if someone
9 defaults they can't serve process except by paying
10 \$20 to have process served. So that's a real
11 problem. Also, you know, the final thing I'd add,
12 not to take up too much time, is, you know, I
13 think it's, it's a little bit risky to try to
14 parse out and make assumptions about why 90
15 percent of debtors don't show up in court. If you
16 have a debt on a credit card, and you haven't paid
17 it, and you know you haven't paid it, chances are
18 you're not going to go to court to say "I haven't
19 paid it." So, you know, we live in very difficult
20 economic times, there are a lot of people who've
21 fallen behind on their credit cards. So--

23 COUNCIL MEMBER GARODNICK: Okay, I
24 understand your point there, and the one thing I
25 would just point out, in terms of the rationale or

1
2 why somebody would not show up to court, I think
3 there are many reasons. One of them of course is
4 the one you describe, but I think, and the recent
5 reports from MFY and Urban Justice Center suggest
6 that there is perhaps a different reason, which is
7 people are not either understanding the notices
8 that they're getting because they're coming from
9 an entity that they never ever did business with
10 for a dollar amount that they never ever spent,
11 because of fees and all of the additional fines
12 that go along with it. And of course, I think we
13 are all recognizing, certainly DCA recognized that
14 there is a problem, a problem, of sewer service in
15 New York City.

16 CHAD MARLOW: Yes, we agree. I'm
17 just saying it's hard to tell how to parse out
18 that 90 percent, but I--

19 COUNCIL MEMBER GARODNICK: Okay, so
20 it could--

21 CHAD MARLOW: --agree with you, it
22 is a problem.

23 COUNCIL MEMBER GARODNICK: So as
24 far as you're concerned, it could be 80 percent
25 related to the things I'm talking about, ten

1 percent people don't want to pay their debts.

2 CHAD MARLOW: Yes, sir.

3 COUNCIL MEMBER GARODNICK: Okay.

4 But we won't, we don't--again, we can't--

5 CHAD MARLOW: That's all I'm
6 saying.

7 COUNCIL MEMBER GARODNICK: Correct
8 to say that we don't know precisely. And just in
9 terms of the suggestions from MFY and Urban
10 Justice that paying minimum wage is an invitation
11 to break the law, I don't think they're actually
12 saying that. I think what they're saying is that
13 the incentive structure is such that you have no
14 basis of knowing, or no basis for anybody or any
15 accountability for anybody to actually show that
16 what they did is what they did in fact do. Now,
17 your industry and the folks who are licensed by
18 who are participating in your industry
19 associations, may have additional training. And
20 they may have additional accountability. And this
21 may not, frankly, even be a problem that is
22 attributable to them. But it is a problem that's
23 attributable to someone.

24 CHAD MARLOW: That's right.

1
2 COUNCIL MEMBER GARODNICK: And I
3 think that is the point that they're looking to
4 get at. So let me go just to your testimony,
5 'cause you had some interesting stuff in here.
6 Your point about deterrence created through the
7 threat of substantial criminal penalties is what,
8 it sounds like you and your Associations are most
9 inclined to support in terms of making sure that
10 the problem that we agree exists goes away or is
11 at least diminished. Is that fair?

12 CHAD MARLOW: That's right,
13 however, you know, the suggestion that was brought
14 about treble damages in a civil case, had not
15 occurred to us, that's a great one, too. I don't
16 want any suggestion that we would, anything that
17 would create deterrence.

18 COUNCIL MEMBER GARODNICK: Right.
19 So it sounds like you're in favor of the idea of a
20 private right of action.

21 CHAD MARLOW: Yes.

22 COUNCIL MEMBER GARODNICK: Okay.
23 And that you're in favor of treble damages in the-
24 -in connection with a private right of action.

25 CHAD MARLOW: Yes, although I

1
2 would, I think a private right of action already
3 exists, but if it has to be done explicitly, fine.

4 COUNCIL MEMBER GARODNICK: Okay.
5 You're for additional penalties for bad actors.

6 CHAD MARLOW: Yes.

7 COUNCIL MEMBER GARODNICK: You're
8 for jail time or additional jail time for bad
9 actors.

10 CHAD MARLOW: Yes.

11 COUNCIL MEMBER GARODNICK: And
12 you're for license forfeiture for those bad
13 actors.

14 CHAD MARLOW: One strike and you're
15 out, yes.

16 COUNCIL MEMBER GARODNICK: Okay.
17 But, you are not in favor of a bonding
18 requirement.

19 CHAD MARLOW: Correct.

20 COUNCIL MEMBER GARODNICK: And as I
21 understand your testimony, the reason for that is
22 because you believe that it will provide, rather
23 than deterrence, it will provide insurance, or
24 comfort.

25 CHAD MARLOW: Correct.

2 COUNCIL MEMBER GARODNICK: And will
3 not in fact solve the problem that we seek to
4 solve.

5 CHAD MARLOW: At best, I think it
6 will probably worsen it.

7 COUNCIL MEMBER GARODNICK: Okay.
8 Now, let me ask you the question about the private
9 right of action and recovery for the victims.
10 This is the one part which was missing from your
11 testimony.

12 CHAD MARLOW: Mhm.

13 COUNCIL MEMBER GARODNICK: Which is
14 we addressed how you punish bad actors.

15 CHAD MARLOW: Right.

16 COUNCIL MEMBER GARODNICK: We did
17 not address how you compensate those who have been
18 harmed. Now, I understand that you support a
19 private right of action.

20 CHAD MARLOW: Mhm.

21 COUNCIL MEMBER GARODNICK: How is
22 somebody supposed to recover anything unless there
23 is a pool of funds somewhere to recover from?

24 CHAD MARLOW: Well, you can recover
25 with any business that does bad against you, you

1 can sue the business, you can sue the individual.

2
3 COUNCIL MEMBER GARODNICK: And if
4 they have not money?

5 CHAD MARLOW: Well, they have, they
6 have assets, they have, you know, computers, they
7 have desks, they can go into bankruptcy. But
8 that's the case with almost any business. You
9 know, most of these businesses are not, you know,
10 have not drained their bank accounts to a few
11 cents in the event that they get caught. I mean,
12 they have operating capital. So, you know--

13 COUNCIL MEMBER GARODNICK: Well,
14 certainly that may be the case for the members of
15 your Associations. But I think that at least of
16 the, let's see the numbers that the, that DCA gave
17 us, was over 2,000 individuals and about 143
18 agencies that are licensed by the City. Those,
19 the vast majority, the individuals, may not have
20 the capitalization to compensate an individual for
21 the many, many harms that could be created from a
22 sewer service situation. Shouldn't that, or
23 couldn't that fairly be attributable to
24 deterrence? Why is that not deterrence?

25 CHAD MARLOW: Because what it,

1
2 because what it does is, it creates a pool of
3 money for victims at the expense of deterrence.
4 What it says is, we are going to create an
5 insurance pool that in the event that you become
6 the victim of sewer service, you know that you'll
7 get the money. But in order to do that, you
8 essentially indemnify the lawbreakers from being,
9 you know, attacked personally in a civil suit,
10 because that is their first line of defense. So,
11 it's not that I don't understand that it would be
12 nice to have a pool, but I don't think it should
13 be our goal to say, "We are willing to accept an
14 increase in the amount of sewer service by people
15 who now feel emboldened by the fact they have
16 surety bonds, so that when they those people are
17 in effect screwed over, they get money."

18 COUNCIL MEMBER GARODNICK: Okay, I
19 hear your point, I think that these are not
20 either/or situations, I think you can up all the
21 deterrence elements, and you can also protect
22 victims at the same time. But I understand your
23 point, I do think that by adding deterrent
24 elements and not creating a level of comfort here,
25 I don't think this creates comfort for anybody,

1
2 but it actually provides some opportunity for not
3 only professionalization of the part of the
4 industry that is not truly professionalized, but
5 also some sort of funds to compensate victims who
6 are harmed. I don't think they're necessarily
7 either/or situations.

8 CHAD MARLOW: But Councilman, if I
9 can, I think you need to bear in mind that there's
10 two groups who these surety bond requirements
11 would affect: those who would break the law and
12 those who would break the law. Those who would
13 not break the law will buy whatever they're
14 required to do, and will create whatever pool
15 they're required to create. Those who are intent
16 on breaking the law, the question is how will they
17 view this requirement? 'Cause there's the real
18 trouble group. Will they, you know, let me put
19 you in their shoes, if you can for a second. If
20 you are planning to go out and create sewer
21 service, and I say to you, for \$200 a year, \$300 a
22 year, I'm going to protect you from a lawsuit for
23 up to \$10,000 or \$15,000 dollars, I'd ask you,
24 one, wouldn't you be excited about getting that
25 protection; and two, wouldn't that provide

1
2 additional security for you? If you already knew
3 you were going to break the law. This wouldn't--

4 COUNCIL MEMBER GARODNICK: Well,
5 why wouldn't I go ahead and take that insurance
6 out today?

7 CHAD MARLOW: You can't. There's
8 no, there's no "break the law insurance"--

9 COUNCIL MEMBER GARODNICK: No, but
10 insurance against liability, insurance against the
11 possibility you get sued for--

12 CHAD MARLOW: They have exclusions
13 for intentional acts. Surety bonds, don't. An
14 insurance, any insurance requirement will say that
15 if you intentionally do X, you're not covered.
16 Whereas the surety bonds don't. They're kind of
17 flat coverage. So that's the problem.

18 COUNCIL MEMBER GARODNICK: Okay,
19 well it seems to me that if you couldn't get it
20 today, and could get it with a situation that we
21 are describing, the bad actors, I mean, you
22 represent, and you have made it very clear that
23 your institutions, your members, want deterrence
24 at the strongest possible extent, up to jail time.

25 CHAD MARLOW: Yes.

1
2 COUNCIL MEMBER GARODNICK: Private
3 right of action, the whole thing.

4 CHAD MARLOW: Absolutely, the whole
5 nine yards.

6 COUNCIL MEMBER GARODNICK: So, for
7 the folks who are not breaking the law, this has
8 no impact on you guys.

9 CHAD MARLOW: Yes.

10 COUNCIL MEMBER GARODNICK: So,
11 correct?

12 CHAD MARLOW: Well, I mean--

13 COUNCIL MEMBER GARODNICK: Well, it
14 sounds like from what I'm hearing from you--

15 CHAD MARLOW: No, I mean, the
16 bonding requirement doesn't, the licensure
17 requirement does.

18 COUNCIL MEMBER GARODNICK: The
19 bonding requirement, the bonding require--yeah,
20 we'll deal with that in one second.

21 CHAD MARLOW: Sure.

22 COUNCIL MEMBER GARODNICK: But the
23 bonding requirement is really sort of a neutral
24 one for your members, is that right? Except for
25 the \$100 bucks or whatever it is.

1
2 CHAD MARLOW: Well, it is, except
3 insofar as that, let's take, if this bonding
4 requirement, and this is where the licensing and
5 bonding requirement work hand-in-hand. The
6 bonding, if the licensing requirement is extended
7 to--

8 COUNCIL MEMBER GARODNICK: Hold
9 that thought for a second, 'cause let's just put
10 aside, let's just assume that it's for the folks
11 who are serving process in New York.

12 CHAD MARLOW: Okay. If every
13 municipality in New York were to adopt the same
14 bonding requirement, they would all go out of
15 business. So it's not a non-problem for them.

16 COUNCIL MEMBER GARODNICK: Okay.
17 But this in itself, it is, in terms of deterrence
18 or impacts, this itself for your members is really
19 not an issue. If you aggregated among multiple
20 municipalities maybe it would have a cost issue.

21 CHAD MARLOW: That's a concern.

22 COUNCIL MEMBER GARODNICK: But as,
23 as it is, as proposed for your guys, it's really
24 neutral. Your point is about the folks who are
25 determined to break the law, and whether this

1
2 provides them comfort or whether this provides
3 professionalization/deterrence. And that is
4 really issue spotting here, that is where we may
5 diverge in terms of our opinion as to what the
6 bonding requirement would do. Is that a fair
7 description?

8 CHAD MARLOW: It is, except that I
9 don't think you can divorce the concern amongst
10 the good actors from the possibility of a
11 landslide of bonding requirements coming from
12 throughout the state and throughout the nation,
13 that would be impossible for them to meet. A lot
14 of people throughout the nation, this is something
15 that NAPPS observes, look at the New York City
16 Council. Councils throughout the country, they
17 monitor you guys. The reason why is they know,
18 "Here's where the good ideas come from." And a
19 lot of these original ideas in other states and
20 other municipalities are plucked right away from
21 you guys. So, if they see you go ahead and do
22 this bonding requirement, they may go ahead and do
23 the bonding requirement, and then suddenly we have
24 this avalanche of fees. So, it's impossible to
25 divorce, to say the good actors have no concern

1
2 about the bonding requirements. A different
3 concern, but it's a significant concern.

4 COUNCIL MEMBER GARODNICK: Okay.

5 So, if I'm hearing you correctly, it sounds like
6 for the good actors, the ones that you represent--

7 CHAD MARLOW: Mmhm.

8 COUNCIL MEMBER GARODNICK: The
9 biggest concern about bonding requirement is the
10 avalanche problem.

11 CHAD MARLOW: That and the fact
12 that if these bad actors are emboldened by it,
13 they will commit bad acts, and that will hurt
14 their reputation. So it's protecting the
15 reputation.

16 COUNCIL MEMBER GARODNICK: Okay, so
17 avalanche and reputation, if bonding has the
18 effect of emboldening bad actors.

19 CHAD MARLOW: That's correct.

20 COUNCIL MEMBER GARODNICK: Okay,
21 alright. Let's go to a couple last things, 'cause
22 we are, we're running pretty far behind here.
23 Thank you for your comments about Section III and
24 the annual training course, and your support of
25 that.

2 CHAD MARLOW: Yes.

3 COUNCIL MEMBER GARODNICK: I think
4 that's very useful. You also noted that records
5 should be able to be kept in paper or electronic
6 form, certainly something we'll take a look at.
7 And seven years versus three years, again, we'll
8 take a look at that question.

9 CHAD MARLOW: Thank you.

10 COUNCIL MEMBER GARODNICK: And
11 thank you for your thoughts on that. Did you have
12 any feeling about the proposal on annual
13 submission to DCA?

14 CHAD MARLOW: No, that, that's
15 perfectly fine. I mean, I think that, you know,
16 again, it's not something had occurred to us ahead
17 of time, but you know, if we can keep these
18 documents in electronic form, which saves us
19 space, it creates the additional benefit of being
20 able to hit a send key and pop these over to DCA.
21 So, there's almost a mutual benefit there.

22 COUNCIL MEMBER GARODNICK: Okay.

23 CHAD MARLOW: So that would be
24 fine.

25 COUNCIL MEMBER GARODNICK: Okay.

1
2 And then the last point, of course, you made,
3 which was the assignment of process. And your
4 testimony was very clear on the subject, and we
5 will certainly take a look at that question, too.
6 So, thank you very much for your testimony, thank
7 you, Mr. Chair.

8 CHAIRPERSON COMRIE: Thank you,
9 Councilman, again thank you Mr. Marlow, I like
10 this new hat that you're wearing, where you're
11 looking to advocate for more, to make sure that
12 there's better requirements and higher
13 requirements, so I'm appreciative of this new hat.
14 I'd look forward to note that you can be a part of
15 the discussions that we have to try to shape this
16 bill in the final form.

17 CHAD MARLOW: Thank you, Mr.
18 Chairman, I do appreciate that.

19 CHAIRPERSON COMRIE: Thank you.
20 Next we'll hear from Claudia Wilner from NEDAP;
21 Matt Schuler from CAMBA Legal Services, is that
22 Matt? And Tashi Wiemer [phonetic] from the Legal
23 Aid Society. [pause] You have to hit the mic.

24 CLAUDIA WILNER: Thank you for the
25 opportunity to testify today. My name is Claudia

1
2 Wilner, and I'm Senior Staff Attorney at the
3 Neighborhood Economic Development Advocacy
4 Project. And NEDAP is a nonprofit resource and
5 advocacy center. We worked to eliminate
6 discriminatory economic practices that harm
7 communities and perpetuate inequality and poverty,
8 and through our consumer law project we have
9 assisted thousands of low income New Yorkers, many
10 of whom are defending themselves in debt
11 collection lawsuits. And many of these lawsuits
12 are involving debt buyers. And we just see such a
13 huge problem with sewer service among our clients.
14 And so for example, so I'd really like to address
15 some of the comments from the previous person who
16 testified, and it's not so much that we think that
17 the entire industry of process serving is bad.
18 But in the case of these debt collection lawsuits,
19 and in particular ones involving debt buyers, we
20 don't have a case of a bad apple, we have an
21 entire segment of an industry that's really rotten
22 to the core. And something needs to be done to
23 address these problems. One, we thought that the
24 work that the Attorney General did around American
25 Legal Process was wonderful, but it was also

1
2 dangerous in that it suggested that only American
3 Legal Process was the problem, and in fact what we
4 see is that almost every process serving agency
5 that's routinely serving our clients is engaging
6 in, we believe, in the same practices that
7 American Legal Process does. It's a real, it's a
8 real problems according, you know, at this segment
9 of the industry. In 2008, 70 percent of the
10 people who called us who were being sued by debt
11 buyers reported that they were not served. And
12 only 12.7 percent of people who called us told us
13 that they had been served in a manner that
14 complied with the law. Now that's very similar,
15 it's interesting, if you look at the default
16 numbers in the New York City Civil Court, it's
17 about 75 percent default judgments, and about ten
18 percent appearances. So we're seeing that, you
19 know, what our clients are reporting to us overall
20 in terms of how they're being served, is really
21 mirroring what the court numbers are showing. And
22 it goes back to your question, I think, when you
23 look at why is it that 90 percent of people aren't
24 appearing in court, a big answer, the main answer
25 to that question is that people just are not

1 getting notice of these lawsuit. And as an
2 example, we have a client who was sued, she's a 58
3 year old nanny, she was sued by four different
4 debt buyers. She was not served in any of these
5 cases, and she didn't, she wasn't legally
6 responsible for the debts in any of the cases.
7 Two of them were passed the statute of
8 limitations, one was a card she didn't owe, and
9 another was a Bally's Gym membership that she'd
10 cancelled, you know, the next day after she took
11 it out. So, they were all junk lawsuits, but you
12 know, she didn't get notice of any of them, all of
13 them turned into judgments. They went and froze
14 her bank account and took \$8,000 from her, which
15 was her entire life savings that she was saving
16 for her retirement. So, people have really big
17 problems in New York because of sewer service.
18 And let me just say, also, that this is not a new
19 problem. People have been talking about sewer
20 service in New York for 30 years. In about 1986,
21 there was a study that the Attorney General did
22 with the DCA, and they had send an investigator
23 around, and they found that the standard price for
24 service was \$3 a service, and that that wasn't
25

1 sufficient to meet minimum wage. And you know,
2 that was 1986, and here we are, people are getting
3 paid, you know, pretty much the same thing,
4 nothing has changed, we don't see a lot of
5 enforcement going on from the agencies that are,
6 you know, supposed to be monitoring process
7 server. And we just think it's really time for,
8 you know, some new things to be done to allow more
9 actors and more forces to come into play to police
10 what these process servers are doing. And that's
11 why we really support all the provisions in the
12 legislation, we support the bonding requirement,
13 we don't think it's going to incentivize more bad
14 service. In fact, it seems impossible for there
15 even to be more bad service than there is, you
16 know, at this time. So, but we also think it's
17 really important to have a private right of
18 action. And the reason is because bonding
19 requirement, it's really only going to be accessed
20 by the Department of Consumer Affairs. We think
21 is really just not going to be sufficient, because
22 the Department of Consumer Affairs just doesn't
23 take a lot of enforcement actions against people.
24 They don't ask for a lot of fines, and so we don't
25

1 think that really serves enough of a deterrence
2 function. But we think to enable, you know,
3 people to be able to become private attorneys
4 general and, you know, to take up these claims
5 when they've been improperly served, would really
6 sort of open it up. And not to mention Legal
7 Services Office, I mean, many of us see the same
8 bad players over and over again. We know who they
9 are, but we really don't have, you know, very good
10 resources at our disposal to be able to call
11 attention to their bad practices, to make agencies
12 enter, you know, into settlement agreements that
13 would reform their practices. And so I think a
14 private right of action would really enable the
15 legal services organizations around the City to be
16 able to help do something about this problem. And
17 I think I'd also just mention quickly that there
18 is a real need, it seemed like from the testimony
19 at the hearing, back in 2008, that a lot of
20 process servers were saying that they didn't
21 really know what the rules were, and so I think a
22 handbook would be really helpful for process
23 servers and those kinds of educational
24 requirements would be really helpful. And I think
25

1
2 I will leave it at there, I'll still have written
3 testimony that I'll be submitting later. Thanks.

4 MATT SCHEDLER: Thank you. I'd
5 like to begin by thanking the City Council for the
6 opportunity to speak here today. My name is Matt
7 Schedler, I'm an attorney practicing consumer law
8 at CAMBA Legal Services, a community based,
9 nonprofit legal service provider, located in
10 Flatbush. CAMBA's consumer law program arose out
11 of it's membership with the working poor
12 coalition, a five member group which includes the
13 Urban Justice Center, West Side S Row [phonetic],
14 Housing Conservation Coordinators, and the
15 Northern Manhattan Improvement Corporation. The
16 consumer program works to assist housing clients
17 at the member organizations with their consumer
18 issues, providing a holistic approach aimed at
19 helping clients achieve self-sufficiency. The
20 amendments proposed by City Council would do much
21 to remedy the problems of improper service and
22 lower the civil courts high default rate. The
23 bonding requirements will ensure that fines and
24 judgments against process servers are enforceable
25 and will eliminate fly-by-night process servers

1 seeking to make a quick buck. The new
2 responsibilities imposed on process serving
3 agencies will help process servers understand the
4 regulations governing them, and increase agency
5 accountability. The requirement lengthening the
6 retention period for log books will assist greatly
7 in conducting traverse hearings. Speaking from
8 person experience, having a traverse hearing where
9 there is no log book is required is
10 extraordinarily difficult, and verification of the
11 service turns into guesswork. While the
12 amendments proposed here today would be a marked
13 improvement on the law governing process servers,
14 more can be done. The systematic failure to
15 effectuate service is not simply the result of a
16 few rogue process servers who can eventually be
17 fettered out. The epidemic of failed service
18 stems from the large incentive to creditor
19 plaintiffs if they fail to inform defendants that
20 they are being sued. Service is not properly
21 performed, the defendant never appears in court,
22 the plaintiff is awarded an automatic victory.
23 This victory comes without having to present any
24 evidence of their claim, evidence because of the
25

1 realities of the consumer credit industry,
2 plaintiff often do not have. Armed with a
3 judgment, a creditor now has a powerful
4 enforcement tool, and is free to restrain a bank
5 account or garnish wages. Magnifying this
6 powerful incentive is the lack of a negative
7 consequence for creditors that fail to serve
8 defendants. While dismissal for improper service
9 is available, unrepresented litigants face
10 enormous obstacles to obtaining it. And as the
11 MFY report shows, this rarely happens. In order
12 to attempt to challenge service, the defense must
13 be raising the answer, and even if this is done a
14 defendant must then move to dismiss for lack of
15 service within 60 days. This requirement is
16 unknown to unrepresented litigants, and in many
17 cases the court date is--the first court date upon
18 filing the answer is after, is scheduled after the
19 60 day time limit has expired. To effectively
20 remedy sewer service, a disincentive for improper
21 service must exist. The creation of a private
22 right of action for defendants who have suffered
23 sewer service would provide this disincentive.
24 Any right of action should provide a meaningful
25

1
2 statutory damages and attorney's fees, to include
3 the consumer's claims are pursued. The right
4 would also make the bonding requirement more
5 significant, as consumers would have a
6 consequential mechanism for making claims against
7 the bond. To permanently remedy the epidemic of
8 improper service, it is necessary to change the
9 calculus, change a calculus the rewards of failed
10 service and easy default judgments. And it's for
11 this reason that I would strongly urge the City
12 Council to consider adding a private right of
13 action to the amendments that are being
14 considered. Thank you.

15 TASHI LEWAI: Good afternoon, my
16 name is Tashi Lewai [phonetic], I'm consumer law
17 attorney with the Legal Aid Society. And we at
18 the Legal Aid Society want to thank you Chairman
19 Comrie and members of the Consumer Affairs
20 Committee for the opportunity to comment on the
21 proposed amendments. We'd like to thank Council
22 Member Garodnick for his leadership on this
23 important issue. We believe the proposed
24 amendments will provide much needed and long
25 overdue consumer protections, and oversights that

1 the current laws do not currently fully address.
2 The Legal Aid Society's the oldest and largest
3 legal services provider for low income families
4 and individuals in the United States. Annually
5 the society handles some 300,000 cases and legal
6 matters for low income New Yorkers. The Society's
7 consumer law practice regularly represents and
8 assists low income consumers who are the victim of
9 unscrupulous process servers and process server
10 agencies. It is our belief that the proposed
11 amendments can substantially reduce the epidemic
12 of default judgments that are obtained on the
13 basis of intentionally improper service of process
14 and fraudulent affidavits of service. The vast
15 majority of clients that I have represented in
16 consumer debt collection cases have been the
17 victim of improper service practices by process
18 servers and agencies. In almost all those cases,
19 we were able to overturn default judgments, to
20 remove holds on bank accounts, and provide relief
21 from garnishment of wages. Yet, because of
22 limited resources, the Legal Aid Society and other
23 organizations that work with consumers are able to
24 assist only a relatively small number of
25

1 individuals who become the victim of unethical
2 behavior by process servers. In New York,
3 approximately four percent of consumers in debt
4 collection cases are represented by counsel. The
5 number of consumer debt cases filed in New York
6 City Civil Court exploded in recent years. Some
7 of the statistics were presented by earlier
8 speakers. In 2006 alone, approximately 320,000
9 such cases were filed in the five boroughs. I
10 believe Council Member Garodnick and Chair Comrie
11 mentioned that well over 80 percent of debt
12 collection cases resulted in default judgments,
13 which are routinely granted when consumers fail to
14 appear in court after process servers claim to
15 have served them. And I actually believe that the
16 number is higher than 80 percent. Current rules
17 pertaining to licensing and regulation of process
18 servers include the general business law and the
19 administrative code of the City of New York.
20 These regulations in themselves lack the deterrent
21 effect and enforcement mechanism required to halt
22 the exponential growth in consumer right
23 violations by process servers. By including the
24 requirements of a surety bond, and recording
25

1 requirements, among others, in the proposed
2 amendments, mechanisms to protect consumer rights
3 will be strengthened. One example of this is a
4 client of mine who has confronted the issue, and
5 he's one example among many others, where he had
6 his, where due to improper service of process, and
7 a fraudulent claim of service, he had his bank
8 accounts suddenly frozen, numerous bills and
9 payments of his were returned back and unpaid, he
10 had to pay hefty fees for the payments that, for
11 the unpaid bills, and as a result his life
12 insurance policy, his car insurance, and his IRA
13 account were terminated when payments were not
14 made. It took many months and his agreement to
15 make a higher monthly payment charge to obtain
16 auto insurance again. Exactly two weeks after he
17 discovered the news about his frozen bank
18 accounts, his wages started to be garnished as
19 well. Now he is a patient care worker at a City
20 hospital, a hardworking, low wage worker, with
21 four children whom he has to support. There are
22 numerous low income consumers in his shoes and his
23 circumstances, who have fallen victim to process
24 servers who regularly partake in sewer service, to
25

1 minimize their own costs. The proposed amendments
2 would effectively reduce the number of cases like
3 his by acting as a deterrent to process servers
4 who take part in abusive practices. The improper
5 practices by process servers are not restricted to
6 a few individuals or a single entity. The
7 practices are systematic and troubling patterns
8 have emerged in the last several years. One
9 example that was talked about was the recent case
10 that was filed by Attorney General Andrew Cuomo
11 against American Legal Process. Another reason
12 that the proposed amendments are needed is an
13 inability of the court system to address the
14 growing epidemic of sewer service and fraudulent
15 affidavits of service because of resources. As a
16 common occurrence in the courts, default judgments
17 are regularly obtained on the basis of fraudulent
18 affidavits of service. The inability of other
19 institutions to provide protection to consumers
20 regarding the issue of service, further illustrate
21 the necessity of consumer protections provided by
22 the proposed amendments that are being discussed.
23 We support the requirement of--

24
25 CHAIRPERSON COMRIE: Mr. Lewai, I'm

1
2 sorry, we're running out of time, can you just
3 wrap it up since you do have it written? You can
4 just give us your primary recommendation.

5 TASHI LEWAI: Well, briefly, we do
6 support the proposed recommendations that have
7 been submitted, with a couple of caveats.
8 Firstly, in regards to surety bond, we believe
9 that it is important. We believe also as stated
10 earlier that it's not an either/or choice. Now if
11 there are people in the process servers
12 association who are pushing for more stringent
13 penalties, we do support that as well, and maybe
14 that's something, as far as criminal penalties, to
15 be picked up by the State legislature. But we are
16 in support of a surety bond. We would recommend
17 that there be an exception made in the case of
18 not-for-profit organizations, where I don't think
19 that the main intent of, and the main problem with
20 process servers, lie with not-for-profit
21 organizations, but rather in the case of debt
22 collecting agencies, or debt buyers and private
23 process servers. So, we believe that's important
24 because--

25 CHAIRPERSON COMRIE: There are

1
2 nonprofit organizations that serve as process
3 servers?

4 TASHI LEWAI: Well, the firm that
5 I'm with, for example, is the Legal Aid Society,
6 and over there we have employees, I'm sure so do
7 the other nonprofit organizations, who are process
8 servers. And I think it would defeat the purpose
9 if we started to penalize the same institutions
10 that are working to prevent cases of abuse of
11 practices by certain individuals.

12 CHAIRPERSON COMRIE: And what do
13 you, sir, what do you do process serving around?
14 What issue? Debt that's old or just cases that
15 you want hearings?

16 TASHI LEWAI: Whenever there's any
17 litigation, whenever we have to file the initial
18 complaints in a case, we do have to have that
19 served according to the same method that you
20 described earlier, by personal service, substitute
21 service, or by affix and mailing. So, that's one
22 recommendation. Secondly, we are in support of a
23 private right of action. We believe that part of
24 the problem is when you have regulations we don't
25 have the ability to enforce it. And we believe

1 that having a private right of action will enhance
2 strict compliance with these regulations.

3
4 Finally, I would like to say that we agree with
5 all of the recommendations and just a final note
6 in regards to the seven year record keeping
7 requirement, I think it's essential that it be
8 kept at seven years and not reduced to a three
9 pattern. Many statute of limitations across the
10 country are set at six years, so it's important
11 that we have it at the seven year benchmark. And
12 having statute of limitation--having that seven
13 year recording requirement is also important
14 because the statute of limitation does not prevent
15 debt buyers from seeking default judgments in many
16 cases.

17 CHAIRPERSON COMRIE: Right, 'cause
18 isn't a seven year period for a debt to be
19 considered null and void, or I'm confused about
20 that period.

21 TASHI LEWAI: Well, I believe the
22 statute of limitations for a debt collection in
23 the State of New York is six years.

24 CHAIRPERSON COMRIE: Six years?

25 TASHI LEWAI: Yes.

1
2 CHAIRPERSON COMRIE: But I thought
3 it was seven years for a debt to be considered
4 null and void. Alright, thank you. Next person?

5 Hi.

6 CHAIRPERSON COMRIE: You need to
7 speak--

8 JOHNSON TYLER: Thank you for
9 hearing my testimony today. I'm Johnson Tyler
10 from South Brooklyn Legal Services. I've been
11 helping consumers for quite a while with debt
12 collection matters. And with all due respect, I
13 think the proposal is terribly weak. Today, if
14 any of you have modern cars, you can get in that
15 car and see exactly where you are. The testimony
16 I've submitted today shows that essentially with a
17 cell phone, we could have all the process servers
18 bringing the cell phone with them, and documenting
19 that they actually go by the dwellings that they
20 purport to serve. The value of doing this would
21 be the process servers would actually get paid for
22 what they're doing. And people would actually get
23 served, sewer service would be so easy to detect
24 that no one would be putting out contracts
25 proposing to pay \$5 per service, because you'd

1
2 have to actually have documentation showing
3 through the GPS system that you actually went to
4 the house. For some, this may seem like a radical
5 idea, but last year, you may remember, a building,
6 a crane collapsed on the Upper East Side, seven
7 people were killed. The story behind that is that
8 the inspector for the Department of Inspections
9 stated in a fraudulent affidavit that he had
10 inspected that crane eleven days earlier. And the
11 agency head of the Department of Buildings
12 mandates now that all city inspectors have a GPS
13 device attached to their cell phones, so that they
14 can monitor where they go. Businesses do this all
15 the time to make sure that people who are in
16 trucks driving around delivering goods, or
17 providing service, plumbers, whatever, are
18 actually doing what they're paid to do. And I
19 think the assembly here should take this into
20 consideration, it could certainly end sewer
21 service and get people to do the work that they
22 purport to do. It's a very simple solution. And
23 anyone who has an iPhone who gets lost, like I did
24 on a biking trip, and has a friend who has one,
25 you can figure out exactly where you are

1 immediately, and you can take a photograph of that
2 place, and it pinpoints on the photograph the
3 exact coordinates of where that photograph was
4 taken. There is no reason to focus on deterrents,
5 deterrents, deterrents. This is a way to make
6 people actually do their jobs. And the history of
7 debt collection, of sewer service is such that
8 deterrence just doesn't work. In 1986, when this
9 study was done, five people were arrested and
10 prosecuted for fraudulent service. We have the
11 same thing happening now. The reason sewer
12 service continues, it's so difficult to detect,
13 it's one person's word against another person, and
14 when you look at what the Attorney General's done,
15 and the resources that they've thrown at this
16 issue against American Legal Process. I mean,
17 it's a tremendous amount of work, they have
18 computer scientists analyzing data, they have a
19 whole slew of people analyzing all these logs, you
20 can do it very simply with GPS technology. Thank
21 you.
22

23 COUNCIL MEMBER GARODNICK: Thanks,
24 Mr. Chairman, just my question for this panel, to
25 the extent anybody wants to answer it, you heard

1
2 from the industry saying that a bonding or surety
3 bond requirement would embolden bad actors.

4 Agree, disagree, or agree or disagree with any
5 modifications to that statement.

6 JOHNSON TYLER: I think it'll make
7 no difference. I think people still can make
8 money with sewer service with that, I don't think
9 it'll make them any bolder than they already are.
10 I don't think it'll deter people.

11 CLAUDIA WILNER: I don't think that
12 a bond is going to embolden process servers to
13 engage in more sewer service than they're already
14 doing. The question is, what's the deterrence
15 value of the bond? I think there's a, has a
16 certain amount, as others have discussed, of sort
17 of lifting the overall level of, sort of quality
18 level of the people who are getting the bond, so
19 that's helpful. I think it provides a pool to
20 compensate people when they're harmed, which is
21 also helpful. And you know, I don't think a bond
22 has to be the only thing, we can also have a bond
23 and we can have more penalties and we can have GPS
24 and we can have better recordkeeping and all of
25 those things together, you know, would probably go

1
2 a long way toward solving this problem.

3 CHAIRPERSON COMRIE: I want to
4 thank the panel for coming. The last person that
5 wanted to testify is Elizabeth Victoria--sorry,
6 it's kind of hard to read--from Legal Services New
7 York City. If there's two people speaking, you
8 both need to fill out forms for the record, and
9 identify your names for the record.

10 ELIZABETH DA VICTORIA LOBO: Thank
11 you.

12 CHAIRPERSON COMRIE: Whoever would
13 like to go first. And please press the button.

14 ELIZABETH DA VICTORIA LOBO: Is
15 that better?

16 CHAIRPERSON COMRIE: That's better.

17 ELIZABETH DA VICTORIA LOBO: Okay.
18 My name is Elizabeth Da Victoria Lobo, and I'm a
19 Staff Attorney at the Consumer Unit in Manhattan
20 Legal Services. I'm here to provide testimony on
21 behalf of Legal Services NYC, and two of its
22 affiliate organizations, Manhattan Legal Services
23 and Queens Legal Services. I know that the
24 Committee has heard a lot of testimony this
25 morning and we've prepared written testimony, and

1 of course we'll be able to get to all of that
2 today. However, I just did want to say a few
3 brief words that in further support of this bill,
4 and I highlight the prob--a little bit about the
5 problem in these cases, briefly, and then I'm
6 going to turn it over to Myrtle Jonas who's going
7 to speak a little bit more about the exact
8 provisions of the bill. And she is from Queens,
9 she's a staff attorney at Queens Legal Services.
10 There's been much discussion about the problem in
11 consumer debt cases, and we of course have seen
12 that, and all the consumer debt cases that we
13 handle. I'd like to highlight, though, that the
14 problem also exists in housing cases. And our
15 attorneys regularly see this who handle these
16 cases. The most severe impact on the justice
17 system and litigants of sewer service results, is
18 when it results in the eviction and because the
19 tenant defaults, and he or she has no idea that
20 they've been sued. In a recent case, to provide a
21 brief example, the wife of a soldier in the Army
22 was evicted from her, from her home, while her
23 husband while her husband was stationed in Iraq.
24 Before a landlord can evict a tenant, the landlord

1 must prove that the tenant is not in the military.
2 Here the process server had submitted a false
3 affidavit stating that he had spoken with the
4 wife, and that the husband was not in the
5 military. This is just one of the many examples,
6 and they that, you know, the problem simply exists
7 in cases where default judgments happen in
8 consumer debt cases. They also, in the large
9 number of default judgments, that happen in it.
10 And in 2008 alone, that was another 280,000 cases.
11 Over to Myrtle Jonas.

12
13 MYRTLE JONAS: Hi, I'm Myrtle
14 Jonas, I'm from Queens, New York. Yeah, actually
15 I'm from your district, actually, alright, Jamaica
16 is where one of our offices is. And the other one
17 is in Long Island City. And we serve the entire
18 borough of Queens County. I do a consumer hotline
19 every week, and I've done consumer work for many
20 years. And I've seen sewer service from the time
21 I started to practice until this very day. Most
22 of our clients find out about default judgments,
23 either when their bank accounts have been frozen,
24 or they've received a garnishment, i.e., income
25 execution letter. Or they've decided to pick up a

1 credit report, or find out, you know, what's on
2 their credit report. You may ask why that is when
3 they find out about it? Well, they find out about
4 it then because they basically haven't been
5 served. And I see it time and time again. We, at
6 legal services, do support the bond requirement.
7 We do support the conditioning of licensing for
8 the process servers, and process serving agencies,
9 on the posting of a security bond. We think that
10 that would cover the fines by DCA, it would cover
11 the claims of the injured. We think it would
12 increase City revenues. We just think it would
13 step up the level of performance of process
14 servers and process serving agencies. We also
15 support the requirement for annual training of
16 every process server. From our perspective, they
17 can't possibly be trained because they're not
18 really serving our consumers, and as I said, we
19 see it time and time again. We also support
20 advising the process servers of their rights--
21 minimum wage, overtime, hours of work,
22 recordkeeping, social security, UI. We also
23 represent low income workers, so this provision is
24 something that is very important to us. We also
25

1 support the requirement that the log book and
2 other records should be retained for seven years.
3 We don't think that's an onerous requirement, as
4 I've just said, we see people who come in two or
5 three years after a default judgment is rendered,
6 and they have to backtrack and find out, you know,
7 why they didn't know about the original service of
8 process. So, keeping the log book and records for
9 seven years is, we don't think it's an onerous
10 requirement. There are a couple of amendments
11 that we want to suggest. Many of our clients are,
12 well all of them are low income, and they lack
13 resources to pay for process serving. And
14 sometimes, they have to rely on friends or family
15 to serve court papers. So, we recommend amending
16 Section 2403(a) to require licenses only of, only
17 of those who do business as a process server
18 instead of what it currently says those who
19 perform the services of a process server. The
20 other amendment that we would like to see is one
21 that I believe somebody from Legal Aid talked
22 about. We support adding an exemption to the
23 surety requirements for a process server who's
24 employed by not-for-profit organization, because
25

1
2 quite frankly we are a not-for-profit
3 organization, and our process servers are in-
4 house. So, those are the two amendments that we
5 support.

6 CHAIRPERSON COMRIE: Thank you.
7 Thank you for your testimony, thank you for
8 coming, and it's good to see that all of the
9 groups that have been fighting for legal services,
10 South Brooklyn, and CAMBA, and the Legal Support
11 Service, Legal Services of New York, and NEDAP and
12 everyone came to testify today. I want to thank
13 all of you for being here. You truly, you are out
14 there in the direct line of fire, dealing with the
15 issues of the poor and underrepresented, and I
16 want to thank everyone for being here. And MFY
17 and Urban Justice Center, also, thank you for
18 taking the time to be here. Council Member
19 Garodnick wanted to read something. We also got
20 for the record a submission from St. John's
21 University, that was submitted by three faculty
22 members, one from the law school and two from the
23 business school. And they have an elder, elder
24 law clinic, a clinical legal education department
25 at St. John's.

1
2 COUNCIL MEMBER GARODNICK: Thank
3 you, Mr. Chairman. That actually is what I wanted
4 to read from, the testimony of Professor Gina
5 Calabrese, Professor Albert Beer, Professor
6 Richard Bennett, all of St. John's University,
7 talk about this particular problem as it applies
8 to the elderly. And they commented specifically
9 on the point about whether surety bond could
10 possibly be perceived as a get-out-of-jail-free
11 card, and there were just a few paragraphs in this
12 letter that I thought were worthy of reading for
13 clarity purposes and just this entire testimony is
14 worth, worthy of public interest. But I just
15 wanted to read this portion on page three, where
16 it says, "Representatives of the process server
17 industry have characterized the bonding
18 requirement as a get-out-of-jail-free card,
19 alleging that the availability of the bond to
20 cover fines and judgments assessed against bad
21 actors in the industry would actually promote
22 continued poor performance by process servers.
23 The industry's argument, however, is based on
24 specious reasoning and a misunderstanding of
25 surety bonds, as explained below, in an analysis

1 prepared by Professors Bennett and Beer, of the
2 Peter Tobin College of Business, at St. John's
3 University. The initial claim that bonding would
4 result in poorer performance simply because the
5 bond exists, is usually associated with insurance.
6 This "moral hazard," as it is termed, states that
7 the mere existence of insurance brings about a
8 sense of carelessness and indifference on the part
9 of the insured, such that they may fail to take
10 needed action with respect to their property or
11 activities. It is not the case with surety.
12 Moreover, with insurance the insured expects
13 losses and loads a certain factor into the premium
14 calculation to account for losses within a certain
15 class or group. Additionally, insurance is a two-
16 party arrangement, insured/insurer, where the
17 obligation of the insurer is to indemnify the
18 insured for all losses covered under the contract
19 in the case of property insurance, or to indemnify
20 a third party, for all losses caused by the
21 negligence of the insured in the case of liability
22 insurance. Once the insured has received either
23 direct payment or protection under the policy,
24 there is no expectation of reimbursement on the
25

1 part on the insurer. Then company has simply
2 honored its obligation under the policy. However,
3 in the case of surety, the situation is entirely
4 different. The nature of the situation is that
5 surety expects no losses because he diligently
6 investigates the principal, one who performs a
7 duty, to determine creditworthiness, character,
8 etc., prior to issuing the bond. Moreover, surety
9 is a three party arrangement involving the
10 principal, obligee, the one for whom, whose
11 benefit the bond is taken out, and the guarantor,
12 or surety, the finance company, or insurance
13 company. In the process server situation, the
14 principal, the process server, would be required
15 to take out a performance bond for the benefit of
16 the obligee, the person requesting the services.
17 In the process, I'm sorry, should the principal
18 fail to perform his or her duties, or be found
19 guilty of misfeasance or malfeasance, the obligee
20 would make a claim against the bond. If the
21 surety pays out in this circumstance, they have
22 the right to proceed against the principal, the
23 process server, to recoup any money paid the
24 indemnity agreement." The testimony goes on, but
25

1
2 I just thought that that distinction between
3 general insurance and surety bond was interesting,
4 and useful for the purposes of some of the
5 discussion we've already had in this hearing. So
6 again, Mr. Chairman, thank you for that. Again, I
7 was just reading from the testimony from St.
8 John's, that was submitted for the record.

9 CHAIRPERSON COMRIE: Great, well,
10 with that, and seeing no one else that wanted to
11 testify, I think we've heard from practically
12 everybody in the room. I want to thank all of you
13 for being here, I want to thank Councilman
14 Garodnick for working with MFY and Urban Justice
15 to bring this opportunity to us to have a
16 discussion on the issues of process serving. I
17 think that it's a good issue, while there are some
18 questions on where the bill is going, I think that
19 the desire to protect the public is clear, and I
20 look forward to working with all of the parties to
21 get this resolved before the end of the year,
22 definitely. And I hope that there will be a
23 concerted effort by all of the people that are
24 here today to try to get this resolved, so that we
25 can protect the public from over, almost 600,000

1 process server, process serving being done to
2 people that really couldn't, didn't understand it,
3 didn't realize it, and then winding up suffering
4 as a result of it. I will add my name to the
5 bill, I thought I had already. And I, you know, I
6 look forward to having a, more discussion about it
7 soon. With that, I want to call the meeting
8 adjourned and thank everyone for participating.

9 [gavel]


10

11

C E R T I F I C A T E

I, JOHN DAVID TONG 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, reading "John David Tong", is written over a horizontal line.

Date November 23, 2009