

>> Tom Pahl: Good morning, everyone, and welcome to our program. I look forward to having a very lively discussion over the next two days about debt collection litigation arbitration. I'm Tom Pahl. I'm one of the assistant directors in the Division of Financial Practices at the Federal Trade Commission. And what we'd like to do to start off our program today is to have some opening remarks from Joel Winston, who is my boss, the associate director in the Division of Financial Practices at the FTC.

>> Joel Winston: Thank you, Tom. And good morning, everyone. It's a pleasure to welcome you all here to our round-table discussion on consumer protection debt collection. We first want to thank the Searle Center on Law, Regulation, and Economic Growth here at Northwestern Law School for hosting this event at this beautiful facility here. I want to thank the discussants, none of whom are actually sitting up here, but hopefully are in the first two rows. We have a distinguished group of panelists here who will be talking about these issues today. I want to thank also the attendees who are sitting out there scattered throughout the auditorium. You know, I always wondered about the science of where people sit during conferences and lectures and such, and reminds me of law school, where you'd have the first row or two filled up with the people who actually had done the homework the night before, and then in the back row, the people who hadn't, who are invariably called on by the professor. So, we'll be calling on all of you back there, so be prepared. This is the first in a series of round tables that we're going to be holding this year to address issues about litigation and arbitration of debt collection cases and the consumer protection implications of that. We hope during these round tables, and certainly have today, to gather a diverse group of stakeholders, including state court judges, government officials, debt collectors, consumer advocates, academics, and lots of other people, to identify the concerns and the possible solutions for the issues that are raised by debt collection litigation and arbitration. Also, I want to mention that we're welcoming any public comment from members of the public, particularly those who can't attend. If they have something to say about these issues, we'd urge them to go to the FTC website and submit their comments either electronically or they can send them in on paper. First, though, I just wanted to review briefly how we got here today. Late in 2007, I'm sure many of you attended our "Collecting Consumer Debts: Challenges of Change" workshop in Washington,

where we explored how changes in the industry were affecting consumers and collectors. And we subsequently issued a workshop report in which we recommended that the debt collection regulatory system be reformed and modernized to address both old problems and new problems that were coming into this industry. And at the time, we announced a series of regional round tables that we would be holding to help us develop policy recommendations specifically on litigation and arbitration, and this is the first of those. We're gonna have two full days of action-packed discussion on a variety of issues. Today, the focus is on the litigation issues. Tomorrow, we'll talk about arbitration. With respect to litigation, as the volume of lawsuits has grown over recent years, there are a number of consumer-protection concerns that have arisen. And fundamentally, are consumers being treated fairly I think is the question we need to answer. Are they getting a fair shake or is the deck stacked against them when collectors bring suits against them? Each panel today will be focused on an individual aspect of litigation which spans the life cycle from the filing of the action to the actual enforcement of the judgment at the end of the day. Our first panel this morning will talk about the initiation of debt collection lawsuits, with an emphasis on service of process issues and default judgment issues. We'll be drawing on the experience and wisdom of our expert discussants, who -- And we hope to compile information about how service of process is effectuated and whether consumers are actually getting adequate notice that lawsuits are being filed against them. We'll also look at the relationship between service of process and default judgments. The frequency of defaults, how often are defaults happening, and are there too many? The circumstances under which defaults are more or less common and the cost and benefits of different ways of addressing these problems. After a short break, the second panel will discuss the statute-of-limitations issues that arise in debt-collection litigation, including the determination of how the statute of limitations applies in particular cases. One of the focuses of this panel will be on time-bar debts. How often do consumers attempt to collect on a debt that's time-barred and under what circumstances? Should collectors be informing consumers when the statute of limitations has run on their debt when they attempt to collect it? Then we'll have lunch, followed by our third panel, which will discuss the litigation itself, specifically, the issue of the quantum and type of evidence that is typically introduced at trial in debt-collection cases. Is it sufficient? Does it vary depending on the type of debt or the type of debt owner? Again, is the trial a fair one with adequate proof to establish the case? The fourth panel will go to the end of the process, the post issues and enforcing a judgment. And one of our focuses there will be on the

freezing and garnishing of consumers' accounts, including one specific issue, which is the extent to which collectors are freezing accounts that contain exempt benefits, such as Social Security benefits. What are the cost and benefits of different ways of collecting on judgments? Our fifth and final panel this afternoon will tie it all together. Are there best practices out there in the industry that we should be looking at as models? How are the state laws and the courts and the industry's self-regulatory efforts been addressing these concerns in ways that we can learn from? What needs to be changed and how should it be changed? The discussants on this panel will share their efforts and experiences in how any needed reforms should be implemented. Again, I want to thank you for coming here today, and I look forward to a lively and informative discussion by the real experts of this, our panelists. So, thanks again. [Applause]

>> Julie Bush: Hi. My name is Julie Bush. I'm a staff attorney at the Federal Trade Commission, and I'm very happy to be here today with such distinguished audience and panel members, as Joel mentioned. I'll be coming back in a few minutes to deliver some housekeeping remarks about what you can expect today, but first, I'm very delighted to announce Geoff Lysaught, who's the director of the Searle Civil Justice Center. He's our co-host and partner in bringing you this event today, and we're very delighted that he's here.

>> Geoff Lysaught: Good morning. Welcome to Northwestern University School of Law. We're are pleased to have this distinguished group of visitors, as well, visiting our campus here at Northwestern and participating in this important discussion. The Searle Center is pleased to be working with the Federal Trade Commission to host this important round-table discussion on consumer debt collection. The Searle Center is a nonprofit research and educational organization based at Northwestern Law that is committed to the study of the impact of laws and regulations on economic growth. Our efforts seek to provide academic public policy and judicial leaders with analytically rigorous and balanced information on important and timely civil-justice issues. Our empirical public-policy research efforts are organized around the Searle Civil Justice Institute. In March of this year, the Searle Civil Justice Institute released a preliminary report on consumer arbitration before the American Arbitration Association. This initiative led by Chris Drahozal, the John M. Rounds professor of law at the University of Kansas, remains the most comprehensive empirical study on the use of consumer arbitration. The report investigated enforcement of due

process protocols in AAA consumer arbitrations, as well as the cost, speed, and outcomes of such proceedings. Under Professor Drahozal's leadership, the Searle Civil Justice Institute's empirical research on consumer arbitration is continuing and is now focused on comparing results from arbitration with court proceedings. Two weeks ago, professor Drahozal shared preliminary findings from this in-progress work with the Congressional subcommittee. These preliminary findings examined how debt-collection cases are resolved in court in order to provide a basis for comparison with AAA consumer arbitrations. Interestingly, these preliminary results suggest that robust business win rates in debt-collection cases may be due to the types of claims being brought and less to the venue in which these claims are adjudicated. Obviously, a topic that can be a robust discussion over the next two days. Copies of both the original March report are located in the lobby, and additional materials, including the testimony that I spoke of that Professor Drahozal gave last week are available on our website at searlearbitration.org. Again, given our research activities, we think this is obviously an important and timely topic for discussion, given that an important component of the Searle Center's mission is to provide not only analytically rigorous analysis, but balanced discussion. A round-table discussion is entirely appropriate and consistent with our mission manner of investigating this important issue. I wish all of you the best of luck, and again, welcome to Northwestern Law. [Applause]

>> Julie Bush: Okay, now for our housekeeping remarks. First, I'd like to remind everyone to please turn their cellphones off so we don't have interruptions during the program. The restrooms are located outside the auditorium and around to the left. So, you know where they are. This event today is being transcribed and is also being webcast, so people around the country may be watching it from different locations. And the panel -- The format, rather, is going -- We're going to have 20 experts of various backgrounds onstage and we're going to take turns talking about different topics. There will be a succession of FTC staff moderators covering each of the topics. At the last 10 minutes or so of each session is intended for questions and answers, not from the facilitator, but from the audience. In your packets that you received today, you'll find two question cards for those in the actual audience here, and you'll want to write out your questions on the cards, pass them to the aisles, and people will be coming up and down the aisles periodically to collect those question cards and bring them to the facilitators. For those of you in our webcast audience, you, too, will have the opportunity to ask questions. You should e-mail them to consumerdebtevents@ftc.gov.

So, you can ask your questions at any point during the discussion. And, in fact, it will probably get to more of them if the question cards have already been collected by the time that 10-minute window comes along. Today, we're having a couple of breaks. There is some food and beverage that's been graciously provided by the Searle Center. We have to thank them for that. The lunch hour will be from 12:15 to 1:30, and it'll be on your own. We have provided maps to local area establishments so you can find places that meet your liking. At the end of the day, we're hoping those of you who are sticking around will join us at an informal gathering. It's at a bar called C-View, located at 166 East Superior Street. It's very near here, and that will give us a chance to talk less formally about the events we've talked about today and so forth. So, please join us, if you can. And I'd also like to announce that the comment period for this round table has been extended. The original deadline was August 1st. We've extended the deadline through September 1st. So if things come up today that you'd like to offer additional information about through written comments to the FTC, we hope you will do so. And finally, I'd like to announce the dates for our next round table. They will be September 29th and September 30th. It'll be in a Northern California location, and we don't have the exact details yet, but we will be working on them as soon as get home from this round table. Thank you very much. I'd like to ask those of you who are today's speakers to gather on the side over there, please. And in an effort not to show any favoritism, we've seated our speakers alphabetically around the horseshoe. Thank you very much. Again, we're privileged to have such a wonderful audience of experts here today of varied backgrounds. And I'd like to -- You'll find in your packets a full description of a biography for each of our speakers. I'd like to ask today's speakers each to introduce themselves by saying their names, where they're from, and if they'd like to add one brief thing about what they're hoping for today, they can do that. Would you please start, Rozanne?

>> Rozanne Andersen: All right. Thank you, Julie. My name is Rozanne Andersen. I am the executive vice president and general counsel of ACA International, the Association of Credit and Collection Professionals. Our primary office is located in Edina, Minnesota, and our satellite office, our government affairs office, is located in Washington, D.C. And I am just looking forward to a lively discussion of the issues and an open dialogue so that we perhaps can understand one another better. Thank you.

>> Pete Barry: My name is Pete Barry. I'm a plaintiff's consumer-rights attorney in Minneapolis whose practice focuses exclusively on debt-collection litigation.

>> Lauren Bowne: My name is Lauren Bowne. I'm with Consumers Union, nonprofit publisher of Consumer Reports magazine. We're based in our advocacy office in San Francisco. And I'm looking forward to bringing the consumer perspective today.

>> Rand Bragg: I'm Rand Bragg. I'm the consumer attorney here in Chicago. I've been doing FDCPA litigation basically on a class-action basis on behalf of consumers for the last 20-some years.

>> Lorry Brown: I'm Lorry Brown. I'm with Michigan Poverty Law Program, which is a statewide resource backup center for legal services programs in Michigan. And I'm the statewide consumer law specialist for the legal-services attorneys.

>> Mike Buckles: I'm Mike Buckles. I'm from Beverly Hills, Michigan, which is north of Detroit, home of the Detroit Red Wings. I'm a collection attorney. I'm also the government-affairs director for the Michigan Creditors Bar Association. I'm the former past president of the National Association of Retail Collection Attorneys. And I'm here to enjoy talking with my colleagues on both sides of the bench and bar, consumer attorneys and collection attorneys, to try and arrive at some consensus so that everything can be fair across the board for collection of debts to the consumers and the creditors.

>> Tom Donnelly: My name is Tom Donnelly. I'm a judge here in Chicago and presided for four years over the judgment collection call here in Cook County. And I'm looking forward to understanding more about consumer debt from people who know more than I do.

>> Daniel A. Edelman: I'm Daniel A. Edelman. I'm a member of the firm of Edelman, Combs, Lattner & Goodwin. We represent consumers in both affirmative lawsuits, including fair-debt lawsuits, and in defending collection cases in Cook County and elsewhere.

>> Ira Leibsker: My name is Ira Leibsker. I'm an attorney from Chicago. I'm partner in the law firm of Blatt, Hasenmiller, Leibsker & Moore. I've been practicing collection law for now 33 years. I'm the immediate past president of the National Association of Retail Collection Attorneys and founder and vice president of the Illinois Creditors Bar Association. And I'm pleased to be a part of this distinguished panel and look forward to the discussion.

>> Steve Lerch: My name's Steve Lerch. I'm from Ft. Wayne, Indiana. I'm partner in the law firm of Wright & Lerch. We practice collection law throughout the state of Indiana. I've been doing that for 17 years. I'm also recently elected president of the Indiana Creditors Bar Association.

>> Jeff Lipman: My name is Jeff Lipman. I'm a magistrate judge in Des Moines, Iowa. I've been appointed about eight years ago. And I'm also the president of the Iowa Magistrate Judges Association. We handle a great deal of collection law in our area, in magistrate courts. And I'm looking forward to being part of this panel.

>> Ian Lyngklip: My name is Ian Lyngklip. I am a member of Lyngklip and associates. I am a private consumer protection attorney, practicing in fair debt-collection practices and fair credit reporting. I am also a former co-chair of the National Association of Consumer Advocates and currently an adjunct professor at the University of Detroit Mercy School of Law, teaching a debt-collection defense clinic.

>> Bob Markoff: Good Morning. Bob Markoff. I am a collection attorney located in Chicago, Illinois. I am the current president of the National Association of Retail Collection Attorneys. I also serve as vice chair of the Illinois Institute for Continuing Legal Education. I hope to learn today and tomorrow of each other's concerns and that we all better understand all aspects of the debt-collection process.

>> Susan Moiseev: I'm Susan Moiseev. I'm a judge in suburban Detroit, the district that includes Mike Buckles' home and office. I've been on the bench 23 years, and I'm currently the president of the Michigan District Judges Association. District courts have jurisdiction up to \$25,000, so we see

-- Most of our civil practice is consumer debt, and our court has been particularly proactive on issues of debt collection, as we've see such a high volume.

>> Julie Nepveu: Good morning. I'm Julie Nepveu with AARP Foundation Litigation. I litigate and write amicus brief on behalf of older people in the areas of consumer law, including debt collection and garnishment cases. And I'm interested in ensuring that the perspective of the older consumer is represented here.

>> Joe Panarese: Good morning. My name is Joe Panarese. I am a judge in the circuit court here in Chicago. And I am in the court that hears the debt-collection type of cases on a regular basis. And I would also like to see the concerns on both sides so that it's a situation that's fair for all parties involved. And I'm happy to be here today. Thank you.

>> Dave Philipps: Morning. I'm Dave Philipps with the law firm of Philipps & Philipps in southwest suburban Chicago. I'm also a member of the National Association of Consumer Advocates and the Illinois state coordinator. I represent consumers in debt-collection cases and in federal court suing debt collectors. Thank you.

>> Barbara Sinsley: Good morning. My name is Barbara Sinsley. I'm the general counsel of DBA International and I'm a partner in the firm of Barron and Newburger & Sinsley. I'm interested in talking about the issues surrounding debt volume today.

>> Michelle Weinberg: I'm Michelle Weinberg. I'm with the Legal Assistance Foundation of Metropolitan Chicago, which is the LSC legal services for all of Cook County. For eight years, I've been running a project doing consumer protection for the elderly. I represent a lot of seniors. I'm also a former board member of the National Association of Consumer Advocates. I'm particularly interested today in the debt buyer and the nature of the proofs required of debt buyers and also in the garnishment of exempt assets.

>> Julie Bush: Okay. Thank you very much. Would everyone please join me in a hearty round of applause for our panelists today? [Applause] Next, we're gonna begin our first panel, which has to

do with initiating suits, default judgments, and service of process. The moderator for that panel will be David O'Toole, who is an FTC attorney from our regional office in Chicago.

>> David O'Toole: Hi, I'm David O'Toole. We're gonna try to figure out how to do this mechanically so that for the rest of the next two days, the lessons I learn, everybody else will be able to apply somehow. We're gonna start off talking about service of process and, in particular, default judgments and how frequent they are. And I was hoping that maybe one of the judicial panelists or the practicing attorneys could talk a little bit about how frequently default judgments occur in debt-collection cases. And then we can talk a little bit more about some of the aspects of that. Maybe one of our judges that specializes?

>> Susan Moiseev: I don't specialize, but I would say -- rough estimate, 'cause I didn't do any calculations -- 85%, 90% of the cases go by default.

>> Male Speaker: That would sound pretty close to being accurate.

>> Steve Lerch: I would agree, maybe even higher.

>> Jeff Lipman: I would say in Iowa, that's probably about right. And I would say when I started eight years ago, when we came into work on the bench, we would have a bin that would be about half full of default judgments. And when I come to work now, eight years later, we have about three or four of those that are heaping over the top with default judgments, and we have about the same amount of judges that are handling these cases that we did eight years ago.

>> David O'Toole: So, why do you think there's more default judgments now in volume than eight years ago?

>> Jeff Lipman: I think part has to do with the economy. I think part has to do with the aggressiveness of third-party debt purchasers that have a lot more interest in bringing actions because of the way they purchase their debts. And it's a numbers game, and I think the numbers have shown that the more they file -- The computerized age of beginning to research the debtors, it

brings a lot more to the table for debt buyers that have more access to get information on debtors, more lucrative for them to file these cases. And I think that that's increased the numbers that we see now.

>> Steve Lerch: I've actually got a little clarification there. You say is there more? I think quantity-wise, there are more, but I think percentage-wise, there aren't more. And I think a good example would be in my main county, Allen County, Indiana, 350,000 people. You go into the small-claims court, they have baskets there -- no action, default to be reviewed, et cetera. I don't think the percentage of the defaults versus the agreed judgments in the basket has changed. It's just that maybe those numbers have changed.

>> Jeff Lipman: I would agree with that.

>> Ira Leibsker: As you look at the number of consumers that are out there and how much credit has grown since 1990 to the present, it's doubled or maybe tripled, so it would only make sense that those numbers would go up.

>> Lorry Brown: In terms of not knowing the cost, but as a legal-services attorney, and I do this statewide, I'd get calls from a lot of the legal-services attorneys throughout the state of Michigan. I would say about 90% of the clients who are walking in our door are coming in post-judgment, based on default judgment. And when we ask them, why didn't they come to us sooner when they got the summons and complained, a lot of their answers, majority of the answers are they never got it, that they're just getting, for the first time, this writ of garnishment. And so it's a post-judgment scenario we're faced with.

>> Mike Buckles: Well, let me address that for a moment, if I could. I've been doing this for 35 years, and the amount of default judgments, the percentage of default judgments actually has decreased in the last five years, primarily because more answers are filed, either through debt negotiators who solicit consumers to pay them money and actually engage in an unauthorized practice of law, to Internet answers -- Well, they do. Internet answers, money-protester answers that you see. But I agree with my colleagues that the volume of collection work has increased, and

anybody would admit that. The number of cases in every court has increased. That's the function of how credit has expanded in our economy, which actually has helped everybody, too. We're a credit economy. But the number of default judgments is probably, in my practice, around 85%. I guess the real question is -- why is that an issue? And if it's an issue of service of process, then that should be addressed at the very outset. The Michigan Creditors Bar does practices on service of process. We have our own unique -- And we'll talk about it later today, service of process. But default judgments in and of themselves are not necessarily bad. I mean, most of the people, in my opinion, don't file an answer because they have no defense. Lorry just mentioned folks come into her office and say, "Well, I never got served." The fundamental precept of all of us who went to law school and became lawyers, we all raised our right hand to swear to uphold the Constitution. It's our obligation, whether you're a defense counsel or whether you're plaintiff's counsel, to ensure you have correct service of process. And I don't think there's anybody in the National Association of Retail Collection Attorneys or the Creditors Bar or any collection attorney that doesn't want somebody served. So, if the issue is service of process, that's one thing. If the issue's default judgments, I'm not sure why that's something that is necessarily good or bad. It just is because people don't respond to their summons or complaint.

>> Rand Bragg: Well, a lot of that is the consumers don't have legal advice or representation. Those of you who saw this morning's Chicago Tribune, on the front page was an article about the increase in litigants being unrepresented, not primarily about debt collection, but just in general. So, it's a common factor. Consumers need assistance and advice about whether the statute of limitations is right, whether the debt is owned properly by the entity that's attempting to collect it, whether the charges in there are proper, all those things. You know, they need representation.

>> David O'Toole: Before we actually go into the debt collection, the lawsuits themselves, if I could, let's turn to talk about the service-of-process issue. That's something that a lot of you have mentioned, and part of our role here is to be educative. And there's a difference, I know, in a lot of jurisdictions as to how to effect proper service. Being a lawyer for the federal government, I'll admit that I know nothing about this subject. I practiced in Cook County for several years before going to work for the federal government, and I know I hated everything to do with service. But, I mean, I know in Chicago, sheriffs serve everything, but you can hire special process servers.

>> Ira Leibsker: In Cook County, the sheriff, in at least municipal court, serve the first summons. And then thereafter, it would be up to the parties to determine if they want to go with a private process server to serve that summons. The sheriff has a service rate of about 40%. The process service, private process service, usually have, of that 60% that isn't served by the sheriff, roughly about a 75% to 80% service rate.

>> Steve Lerch: I think a threshold question -- And I'm only familiar with Indiana, and I realize that every state has their own -- is what has been established as good service of process? Now, in Indiana, you would go to trial rules, which are established by the Supreme Court, or specifically under 4.1234, but the primary one is trial rule 4.4, and it will tell you, personal service, I give it to the defendant. Certified mail, return receipt. Those two are seldom a problem. I mean, you want to come in front of a judge or magistrate and say, "I didn't get notice." Obviously there may be some fraud involved, but other than that, you've probably got good service. The one in Indiana that probably generates the most problems, to the extent there are problems, are what we commonly call posting and mailing. And no matter who serves it -- sheriff, private process server, the plaintiff, whoever -- that constitutes putting it in the last known residence that you believe the defendant resides. Going back, and in the case of a small-claims complaint, sending the notice of claim, in the case of a plenary complaint, a copy of the summons to the address. And if the court sees that that "sticks," does not come back to the court, that is considered good service. Now, I don't know what the others states do, but that's the primary way. And we have other ways how to serve the government, how to serve corporations, how to serve infants and incompetents, and everything else, but that's the primary rule 98% of all cases.

>> Dave Philipps: And that's the one that I have the most difficulty with. Although it might be Constitutionally be okay, it relies on the fiction that the post office is gonna deliver it, and if it's a bad address, it comes back. And I think the Boston Globe or one of the newspapers sent 100 letters out to 100 known wrong addresses, and only 50 of them came back. And I practice in Indiana and Illinois, and I've done class notices in Indiana. In fact, I did one earlier to 8,000 Indiana residents, and a bunch of notices came back right away as bad. So under this rule, we presume all the rest were good and a default judgment be entered, if I was a collection attorney, god forbid.

>> What does that mean? [Laughter]

>> Dave Philipps: About 60 of them have been trickling back, you know, in August, well after they would have taken a default judgment. So I think copy service is a real problem, from my perspective.

>> Jeff Lipman: In Iowa, we're pretty similar to Indiana. We have a statute that requires a personal service that that be sent. In small-claims court, we have an exception, where the clerk actually mails certified service. Now, as a judge, when it comes back, you know, we look at them for default. And what I usually look at is that if it says "unclaimed," or if it says, you know, "unable to forward" or "undeliverable," then generally speaking, I'll I'll send a notice out to the plaintiff, saying, "You need to have actual service. You need to go personally serve this or try it again." If it says "unclaimed" or something like that, then for the most part, we'll probably enter default judgment. I don't know if some of the debtor attorneys or consumer attorneys think that that's not a good practice, but that's the way we've generally done it in my county.

>> Michelle Weinberg: A lot of creditor attorneys rely on postal checks that they ask the post office, and the post office says, "No forwarding order on file." But often, I get people who say, "I never lived there, so there was no reason to change my address."

>> Mike Buckles: Well, one of the points in Michigan that her honor's making is that we have to first have personal service. We have to do that, and it has to be sworn under oath with a notary signing, unless it's an officer of the court, a court officer or sheriff. If that doesn't work, we have to go to the court and say here's our reasons why. And quite honestly, a postal check is not sufficient most often with many judges. They want something else. And our process servers will do what's called a verified statement of attempts. And it'll say they went there, there was this car in the driveway, there was people inside. "I put my card on the door." A lot of times, that's not enough. You have what we as lawyers call the totality of the circumstance. We've sent out a demand letter, statements were sent to that account, the letters weren't returned, but better than that, we ask our process servers, "Give us the license-plate number, look that up with the Secretary of State, see

who owns the car.” And if they own the car, then that's something we give to the judge. And it's up to the judge to determine whether they're gonna give us alternate service. And might I just add one more thing so that everybody understands something. Many debtors evade service. Not only that, many debtors are told not to accept service.

>> Female Speaker: I'm shocked!

>> Mike Buckles: [Laughs] The debt-negotiating companies actually tell -- And the Internet -- "Don't take any service, don't answer any phone calls, don't answer letters, don't take any service." So, that's just a factor that needs to be considered in all of this, because it's a balancing point.

>> Ian Lyngklip: Well, you're jumping straight to alternate service and you're jumping over the pink elephant sitting in the room, which is what happens when the process server lies?

>> Mike Buckles: They should be prosecuted, Ian.

>> Bob Markoff: Send them to jail.

>> Ian Lyngklip: Well, what does that do for the consumer, though? Sending them to jail and leaving this to the judicial system or to a prosecutor or D.A. you know, how long did it take Andrew Cuomo to bring that suit that we just saw last week? You know, 100,000 judgments, potentially bad judgments, go out.

>> David O'Toole: Maybe you could tell a little bit more about that, if you know the details.

>> Ian Lyngklip: Well, I know what I read in the paper, and the basis of the suit is that there are potentially 100,000 judgments out there in the state of New York that are predicated upon nonpersonal service in the face of an affidavit of a process server. So before we even jump to is alternate service an appropriate means, by state-by-state basis, of obtaining service and providing due process? The first problem that I see in my practice is -- I see people who have never been

served and, in fact, are being served at bogus addresses or being served at times and places when they can demonstrate they were not either at their homes or in their state. They have work records.

>> Susan Moiseev: And are you suggesting that the judges aren't setting aside that service?

>> Ian Lyngklip: Oh, there are any number of judges who won't set that aside without a meritorious defense --

>> Mike Buckles: Not if there's not notice. Ian, that's not true. That is not true, I'm sorry. If you don't have notice -- That's a Constitutional right to have notice. Every judge -- every judge in the state of Michigan and in this country will set aside a judgment if a person did not have notice.

>> Ian Lyngklip: I know what due process says and I know what the requirements are, and I don't think that the focus should be on whether a judge is correctly applying the court rules that would allow it to set aside. I think that the judges are greatly overworked and I think they are underresourced --

>> Susan Moiseev: And underpaid.

>> Ian Lyngklip: Grossly underpaid, your honor. And grossly underpaid. And I still see that this happens, but the problem is -- the process servers are themselves immune from action under the FDCPA, and we have debt collectors who occasionally are employing people that they know are bad process servers. [Indistinct shouting]

>> Bob Markoff: We are not looking to commit fraud. We collect debt ethically. We do not want invalid judgments. Do you know what a waste of our time and resources, five years down the road, to have a judgment quashed when you're in the middle of a wage-deduction proceeding and you have to go explain to your client that you had bad service? We want good service. And the reason --

>> Susan Moiseev: You do, but not everybody.

>> Ian Lyngklip: I would not suggest that that is the practice. I'm not not suggesting that that is the practice, but when it happens -- And we have had instances of attorneys in our state who have falsified service of process and were --

>> Bob Markoff: Attorneys who falsified?

>> Ian Lyngklip: Your honor...

>> Susan Moiseev: Yeah. We did have a situation in Michigan.

>> Mike Buckles: He was disbarred.

>> Susan Moiseev: No, he wasn't disbarred.

>> Mike Buckles: Well, he was suspended.

>> Susan Moiseev: I think it was 87 counts of contempt in regard to his falsifying proofs of service, and affidavits were substituted.

>> Michelle Weinberg: I would not -- I think that the judges will typically accept the affidavit of the process server over the client who comes in two years later when their wages are being garnished, who says, "Oh, I never got service." And they say, "Well, we have an affidavit, sworn statement, says you were served." And they won't vacate the judgment.

>> Male Speaker: I don't think Judge Donnelly did that.

>> Michelle Weinberg: Well, Judge Donnelly wouldn't do that.

>> David O'Toole: Actually, Judge Donnelly, you're a good one to ask about this. The issue of judges being underpaid -- I think we can all agree that government employees are generally

underpaid. So, what's your docket like? You know, I practiced in immunity court a little bit back in the day.

>> Tom Donnelly: Well, in the the tubs, Joe Panarese and I are well familiar with, in the trial courtrooms and in the collection call, the tubs of default orders are enormous. So you have, sometimes in the collection call, 300 to 600 default orders to go through. The difficulty, I think, that's raised by the New York case -- I read the complaint in that case, and it's a very interesting complaint -- is that documents that process servers, by an audit conducted internally by the court -- which is interesting, something we don't have in Illinois -- determined that process servers were claiming to have personally served up to 12 or 13 people simultaneously in different regions of the state. And in the complaint, on pages 6 through 9, are all these documented occasions of simultaneous service. And I had the same attitude as many people here hearing all these complaints. If I wasn't served garnishment and that sort of thing, that these people are just making it up. But one day, one of my colleagues, Judge Sanjay Tailor, just took a swath of services from one process server, and this person claimed to be in areas 30 miles apart in the Chicagoland area within minutes. And we brought him in and the law firm in, and we said, "Is he Superman? How can he be doing this?" And he came up with an explanation that he was signing it for other process servers. But that experience of seeing fraudulent service gave me a lot more skepticism for actual service of process and a lot more belief in what debtors were saying than I had previously. Previously, I dismissed it. And that, I think, is the biggest cause for concern among the judges is that the whole judgment is bad if service isn't good. And I think if there's any area which to be concentrated on, it's assuring good service, and I think auditing service by just taking the services, personal service, and having -- You know, in Illinois, we don't have anybody that does this. But I think it would be very good, because otherwise, there's no check on it. Otherwise, it's just hit and miss by debtors who are motivated enough to file a motion to quash the service process, which, as we know, is very difficult for them to do without -- In Illinois, we have several requirements. They have to have an affidavit attached. They have to comply with certain legal standards. Most of them won't be able to do it. And I think the importance, the due-process importance of notice and an opportunity to be heard, is so important that we shouldn't rest all of that on the slender reed of debtors taking the initiative to file motions of process. There should be some internal court audit of service so that we can do this. And I just want -- One more thing. I think a lot of the collectors sort

of get their -- Or debt collectors' attorneys get their heckles. My experience is there's an extraordinary range in the ethics of the collection bar. And I think the people who are seated here are among the top drawer of the collection bar. But there are people who are collecting on their own debt who have very great motives, sole practitioners, to maybe hire not the best process servers. We as judges are powerless to figure out -- We can't treat anybody differently. We have to treat everybody the same. We've got this huge volume. We can't do audits of service of process, and it's very difficult for us to deal with this situation when we've got all these claims of people who weren't served. There's nothing really that we can do besides rule on the motions that come to us.

>> Susan Moiseev: Well, we did have a situation, also, with a simultaneous service within our community, but I know you can't get from one end to the other in the same time. And I brought -- But my clerks picked that up. Because they tend to file a handful, you know, a stack of service at the same time. And so, just thumbing through them, the clerks found that out right away.

>> Bob Markoff: Bad process servers aren't particularly smart.

>> Susan Moiseev: No. Well, they're doing that job.

>> Bob Markoff: That's how you catch them, and it usually is the clerk. And frankly, 20 years ago, our firm was victimized by a fraudulent process server, and we cooperated with the state's attorney's office to prosecute the individual. But the point was -- I didn't knowingly go out to hire a bad process server. And, in fact, we do our best to check process servers. And I'd like to offer a recommendation that we can help ameliorate the situation, and that is -- when we are alerted by our servers that there has been service of process, we should be able to send out a letter or a copy of summons and complaint to the consumer. But our fears as a collection attorney, a collection bar, is that may in some way be violative of the FDCPA and maybe giving an overshadowing type of notice -- And I leave my colleagues on the panel to think of reasons to sue me if I were to send out such a notice to the consumer. If the consumer wasn't served and I've sent this notice, but the mail's received and they come to court and they weren't personally handed with summons, I don't want to be accused of doing an unfair litigation procedure. But the point is that there are ways that we can

do a better job to ensure that the consumer receives notice, regular mail as opposed to certified mail. And Judge Donnelly, in particular, on motions for special service in unusual circumstances will require posting of the summons and complaint on the gate or door of the house, if it's a gated community and it's locked. Now, that in itself can be seen as violative of the FDCPA because it's a public posting of the complaint. But the point is -- that's the risk we take with that type of service. But we do our best always to obtain service.

>> Susan Moiseev: But you could also stick the burden back to the process server, him or herself. It's easy for me, when the process server writes down that the person was 5'2", 180 pounds, and then the person standing in front of me says "I was never served" is 6 feet tall and, you know, 190, and that helps me a lot.

>> Mike Buckles: Your honor, I would suggest that the consumer attorneys here get together with the creditors bar in each state, and that's exactly what the Michigan Creditors bar did. We have a best practice that requires that. In fact, I reject and will not pay for any proof of service that does not list the physical characteristics of the defendant. I want age, gender, race, hair color, whatever else they can get. So when that debtor comes in front of Judge Donnelly or Judge Moiseev later and says, "I wasn't served," the judge can look at that. "Well, how did they know that? They couldn't fabricate that. It'd be awfully hard to get that much fabrication." There is an example of data that we can use that will help --

>> Pete Barry: If I could jump in, your honor. I mean, all that information is available on publicly available databases -- LexisNexis, Accurint. There's all kind of information that for \$1, you can pull up that includes driver's-license information that would have all of those physical characteristics on it. I've seen sewer service in Minneapolis, and I know I've seen it because I had a process server who claimed to have served my client when my client was in a locked facility, a bank facility behind three layers of security. We looked at the security tapes, and it never had anybody. Nobody ever signed in. And that person couldn't physically have gotten in there unless they had gotten past all those guards. That case got resolved, but the fact of the matter is -- And I believe that the attorney probably meant well when they hired that server, but when we're talking about both default judgments and service of process, I wanted to just talk a little bit about how it is

in Minnesota. You know, It may very well be in Michigan that there aren't nearly as many default judgments in Michigan as there were 20 years ago. But I will tell you we are absolutely -- And I think that was a comment you made, but --

>> Mike Buckles: No, I didn't say that. There's more default judgments, but I don't think the percentage is any -- Pete Barry: Okay. Well, I will tell you that the percentages skyrocketed in Minnesota, in particular in Hennepin County. There's been numerous television stories and local newspaper stories about how the Hennepin County courts -- would be somewhat comparable to Cook County here in Illinois -- have been inundated with default judgments by the clerks. And the reason for that is very simple -- because the laws have been designed by the -- Barb, with all due respect to the collection bar -- by the collection bar to benefit the collection bar. We've got hip-pocket filing in Minnesota, which allows a collections attorney to serve someone without filing the lawsuit with the court. There's no judicial oversight. And all the judges on the panel perked up and thought, "Well, what's our job?" Well, your job is marginalizing in Minnesota. You don't have a job in Minnesota on a default judgment. On an administrative default judgment in Minnesota, that's handled by the clerk. You can serve a lawsuit in Minnesota, never file it with the court, and garnish wages when you, as the attorney, the collections attorney, determine that that consumer's in default on that debt. I think that being able to collect debts without any court intervention or any judicial oversight is absolutely -- It's counterintuitive to any sense of due process in my mind. And I was shocked -- as these judges are looking. I'm telling you that that's how it exists in Minnesota. You can file, you can serve a lawsuit, never file it with the court, and the default occurs because the consumer picks up the phone and calls to Hennepin County and calls the clerk of the court and says, "Madam clerk, I got served with this lawsuit, and it doesn't have a court file number on it." And the judge says, "We don't have anything on file for you." They don't have anything on file because it was never filed with the court. You initiate a lawsuit in Minnesota by simply serving the summons or complaint.

>> Bob Markoff: Well, that's not the case in Illinois, I assure you.

>> Susan Moiseev: Doesn't it have to be followed up with?

>> Pete Barry: Never have to file it.

>> Male Speaker: How do you garnish when you don't file?

>> Steve Lerch: How do you do post-judgment proceedings? How does a creditors attorney do post-judgment proceedings?

>> Pete Barry: You simply -- If you want judicial intervention, if you want some kind of order -- I mean, you can take discovery without a judicial order. But if you want some kind of judicial intervention, you can then file it. But I would say that --

>> David O'Toole: Is this unusual, though? [Indistinct shouting]

>> Pete Barry: That's right. Except that when you're in Minnesota, it's not unusual. I mean, that's how it works.

>> Susan Moiseev: I just sanctioned a law firm because they issued a garnish -- They served a garnishment without it ever going through the courts.

>> Bob Markoff: Right. We've had that happen in Cook County.

>> Pete Barry: That's rewarded in Minnesota.

>> Susan Moiseev: Sometimes we'll get the disclosure, and we didn't have the garnishment.

>> Ian Lyngklip: If I can come back around to the process servers, which are the problem. And certainly, I, you know, acknowledge that, you know, the attorneys on this panel would not want to hire somebody who they know is a bad process server, but the process servers themselves have all the adverse incentives that are documented within the FDCPA itself, fall within the statutory definition of a debt collector, and are effectively exempt, and are amongst themselves participating in a race to the bottom, the same race to the bottom that the statute is trying to avoid. And without

bringing them into the system at this point, I think what we're gonna expect to see more and more of these kinds of problems popping up. Because the question, the ultimate question is -- what's the remedy gonna be for the consumer? How are they gonna fix it when they have not been served and the judgment's been taken? What's their remedy?

>> Bob Markoff: The remedy is to quash the service and send the process server to jail.

>> Ian Lyngklip: Who's gonna send the process server to jail?

>> Bob Markoff: Wait, wait, wait. The judge -- First of all, you've got a judge supervising these cases, okay? And the judges -- and Judge Donnelly I've known for many years -- will not hesitate to use the full authority of his office to punish someone who files false pleadings or does any improper act or in any way harms not only the consumer, but the process of law. So, to say that we need more regulation -- We have the regulations on the books. We need better enforcement. Just to pile on more laws or to give consumer attorneys new causes of actions, are you going to add the sheriff's office in there, too? [Indistinct shouting]

>> David O'Toole: Before you go on, before you go on, because we're degenerating here. Of course, like Cook County, where sheriffs do service what, 40% of the time is what I heard?

>> Male Speaker: They serve approximately about 40%.

>> Ira Leibsker: A lot less. It's actually less. It's probably less.

>> David O'Toole: Living in Cook County for most of my life, I know that, you know, the sheriffs don't have the best reputation. But is there less problems with the sheriff service.

>> Ira Leibsker: If I could respond. There are different problems, but to respond to that, I actually have more motions to quash on services that done by the sheriff than are done by a process server, and they're serving the lesser amount. So an officer of the court necessarily isn't going to serve process any better than a private processor.

>> Michelle Weinberg: Most judges would recognize that, 'cause it's even tougher to get a motion to quash when you've got a sheriff's affidavit.

>> Ian Lyngklip: But there's also an alternative remedy that's out there for the sheriffs because you have available a 1983 action, if that's gonna be a problem. But for a private process server -- I've quashed service. I mean, I go into courts. I've never seen a process server brought into court. I've never seen one prosecuted. I've never seen one sanctioned. I've never seen anything happen to these cases.

>> Susan Moiseev: Ian, you have. You've been in my court. [Laughter]

>> Susan Moiseev: I do that.

>> Tom Donnelly: I wonder, Mr. Leibsker and Mr. Markoff, what would your -- I was really impressed by reading about the internal audit that was conducted by the New York courts. And I thought, in judging from my experience with Judge Taylor's little audit that we did once, what would be your response to spot audits being conducted by some agency, the attorney general, or something to check on service to make sure --

>> Bob Markoff: Actually, I would encourage the spot audits, because I have nothing to hide. I want to use the best process servers possible. I use a couple different process-serving firms for the event that if someone goes bad or, you know, keep them on their toes. I want good service. I know one of the firms we use -- Actually, both of them will tell us there may be questionable servers here because the person refused to identify herself or himself, and we're not sure, but we're going to give you a serve return and make notations. We have notations available for the court on most of our services as to just what happened. "Refused to open door, music in house," or "person opened door, surly, threatened to shoot me. Please don't send me back there." We have these notations. And so, the point is -- we want good service. And I will welcome -- My books are open, so to speak. Pull the court files, look at who we use and what they do in service. You'll see very few motions to quash on our matters.

>> David O'Toole: We have plenty of time, so, please, one at a time.

>> Ira Leibsker: If I could add just one comment. At least in New York, the audit that took place there, from what I understand, the attorney general was able to spread all these services out on a big table and actually look and see where these things were being done. So, for one law firm, they could serve something at 8:00 in the morning, and another law firm serve at 8:05 in another part of the state. That particular law firm, if they did their own internal audit, might not have been able to spot bad services, okay? And I just want that to be made clear, that as much as auditing that I could do within my office, I don't know if I could spot fraudulent return. And I think -- An external audit, I surely have no problem with that. I encourage it, if anything.

>> Daniel A. Edelman: What I think is needed is a means of routinely requiring the private process service to account for their actions in such a manner that it makes it easier to detect this sort of problem. I would suggest requiring them to keep a log of their daily activities showing who was served, when, where, for whom, and requiring that this be filed with a court or state official so that if there are any anomalies, it can be readily detected. There is one other problem, and I do think some of the fault for this lies on debt collectors and creditors. In Illinois, we have substitute service. You can serve a member of the household over 13 and then mail. The problem is -- And I've personally encountered this on multiple occasions -- somebody is served. That person has nothing to do with the defendant. They're not a member of the household. They're not a relative. In some cases, it is a place where the consumer lived some years ago. In some cases, it is a person with a similar name. And what happens is a return of service is filed saying, "I served XYZ at such-and-such a place, I mailed it." Somebody actually gets this. I've had cases where they've actually called the plaintiff's lawyer or called the creditor and said, "Hey, I got this. I'm not this person. I've never had a debt like this. My name is misspelled. What should I do with this?" "Oh, forget it." Thereupon, a judgment is entered against a debtor, and when the time comes to enforce the judgment, more often than not, they have executed against the right person. They usually send a wage deduction to the employer of the correct person, who, for the first time, finds out about it. And I think that something needs to be done to ensure that the person served can be identified by address or otherwise with the intended debtor.

>> Lorrain Brown: Just to reiterate that when as legal-service attorneys, we go in and we file a motion to set aside a default judgment because of lack of service or even, you know, with foreclosure issues, where a homeowner is saying they never got notice, and the burden is on them because the harder problem is that when we go in and they're in the court files, there's some affidavit from the sheriff saying, "I served this. I post this." We lose, right? So, maybe what needs to happen is maybe a shift rather than audit. An audit is great, but it's not gonna work with my individual client at this point. Maybe the burden then shifts to the debt collector or the foreclosure attorney to come now with the sheriff to show some kind of log of how many service they did that day, how it jives with the service that the homeowner or the consumer is saying they didn't receive that service, and if it's likelihood that they would have been able to serve that homeowner on that particular day and time they say they did. And so, maybe that's what needs to happen is on an individual case, is that we get the shift of the burden on the other side, once the homeowner asserts lack of service.

>> Julie Nepveu: If I may, there are additional problems with service beyond not getting service. The abuse-of-process problems that are happening, where the service is accompanied by a settlement, a stipulation of settlement, or something of that nature or even in some places in Maryland, the court sends a letter that says, "Come to the courthouse and meet with the debt collector and tell them you owe the debt." And then you never even get to court. What is it that's being served? Is it just the warrant or is it more? And does that "more" create a problem for debt collection in addition to these service problems?

>> David O'Toole: The letter you're talking about in Maryland, is that actually coming from the court?

>> Julie Nepveu: It comes from the court and it tells the debtors to come, and they come to a room basically like this. They line up and they talk to the attorney. They never have a right to get to court. They never get told, "Well, gee, if you have a defense, don't talk to the attorney about it, or anything you say will get used against you." They never have an opportunity to find out whether or not they're going to have a court date. They might have to come back several times. Some of the

folks that we're talking about are people who have a really hard time getting to court, a lot of the folks who have high debts or medical debts, especially. You know, they may have disabilities. It may be very difficult for them to come to court several times. So, when they were told by the court, "Come and talk so that they don't have to deal with so many judgments or a huge docket," this is a way the courts have set up to reduce the load.

>> Susan Moiseev: Is this before?

>> Julie Nepveu: This is before a new trial.

>> Susan Moiseev: No, no, no. Before they've filed an answer?

>> Julie Nepveu: Yes.

>> Susan Moiseev: 'Cause we use a mediation service after they've filed an answer.

>> Julie Nepveu: Yes, this is not a mediation. This is a "come and meet all the debt collectors." I mean, they may not even speak English. I mean, they've got folks who may have time-barred debts that are signing off these things, a lot of older folks who think that when they get this stipulation of settlement, that they have to sign it or they'll go to jail. I think there are a lot of misconceptions. People who are lawyers don't understand how people who are not lawyers think anymore. We've forgotten. And the people who are out there living, getting this scary notice, not understanding what it means, not understanding what that means for whether they have to do it or not. I mean, if you go to the OCC website, it says, "Follow the directions the letter you got from your debt collector and do what it says." It's like, it doesn't say, "Get an attorney." It doesn't -- People need more legal advice. They need better representation, because these service issues do not -- I mean, they don't go away just because somebody checked a log.

>> David O'Toole: Hang on. Let Rozanne talk, please.

>> Rozanne Andersen: I do not want to misstate my level of experience on a daily basis with the service of process, but I just want to at least take a moment to put some things into perspective here. From the ACA International's standpoint -- and I think it's fair to say on behalf of the industry the collection and asset-buying industry -- we absolutely denounce any practice by the asset buyers or by debt collectors, by collection attorneys that would intentionally or even through oversight suggest that improper service is acceptable. I mean, the heart and soul of all of us as lawyers, we know, as you said, Mike, we need to effectuate proper service. Now, having said that, as an association, we're also very attuned to the fact of the word accountability. And I think what we're hearing is that we are hearing that there's tremendous differences from jurisdictions, from state to state, in terms of how this problem is handled. So I do not want to understate the problem. That's obvious, and I applaud the FTC for creating this dialogue or this opportunity to raise the service-of-process issue before us. But I do think that -- I'll say it this way -- the New York City Department of Consumer Affairs called me about a year and a half ago and said, "Rozanne, is there any way your association can put together some best practices for service-of-process issues?" And I kind of reached out and tried to figure out how to do this. But do you know what I met? I met with not 50 different variations of the issue, I mean hundreds and hundreds of variations of the issue. It's like we're not the right -- I don't want to just disavow responsibility, but it was like an oddball -- Not an oddball question so much as it's difficult to find that solution uniformly. And even, it sounds like as judges, you have different styles and concerns and sensitivities. So, what I'm suggesting is that -- I know that as representatives of the debt-collection industry and the asset-buying industry, we are here to be accountable for that, which We should be, and to help solve problems. Many of your questions conclude with, "What can we do about any of this?" We will do what we can, but when it comes right down to it, I'm not one to shift blame or responsibility, but it strikes me that sometimes when the judiciary does meet, perhaps this is a perfect opportunity in your world to either drive initiatives or help the community understand what needs to be done. Because I guess in closing on this issue, clarity of responsibility is all that the industry really wants. And so, if a certain type of service of process is preferred for the safety and the protection of consumers, I don't think anyone would disagree with that. But if it's all over the map and some states' process servers are licensed, other states, they're not, there are no best practices at all, and they're not even at the table. I mean, so, it strikes me that, at best, when you go from city to city and hear about it, you're going to hear hundreds of stories in terms of different ways to serve

consumers. But the bottom line is -- I don't know what the industry can necessarily do but rely on -
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>> Bob Markoff: Service of process doesn't really concern just consumers.

>> Rozanne Andersen: Right.

>> Bob Markoff: When you're talking service of process as an issue, you've got personal-injury cases, you've got tort cases, you have probate cases, you have supplementary proceedings. So you can't -- Anything. But I don't think we can just carve out an exception for serving a consumer on a particular type of case. And we have the court orders --

>> Pete Barry: Why couldn't we do that?

>> Susan Moiseev: Because of the bulk, the volume. It's difficult. Pete Barry: If you require that on any consumer contract case, let's say in excess of \$1,000. If you required a license-certified process server to serve that and you make the qualifications simple -- can't be a felon, you've got to be over the age of 18, you've sworn an oath, and you log your service, which would require maybe 10 log entries a day -- I mean, listen, the UPS guy does it every day. My father-in-law was a UPS guy. He did 400 packages a day, all signed for at all over his route. He knew exactly who got the package because they had a signature. If you, on a consumer debt, you certainly -- And maybe you can't make this a requirement across the board, but I think that at the one point where due process really matters, we ignore it and we hand it out to 18-year-olds who don't have any dog in the fight. They're not lawyers necessarily. They're not licensed necessarily. I mean, I don't know of any states --

>> Bob Markoff: Yes, as a matter of fact. Illinois, in the local rule, in the circuit court of Cook County, both in the chancery division and the 1st municipal district, the court allows the appointment in contract cases, consumer-contract cases, a licensed private detective agency. You must make a motion to the court. You must identify the agency. You must attach a copy of the license. And the appointment is valid for 90 days.

>> Pete Barry: To serve process?

>> Bob Markoff: To serve process. And each collection firm, or anyone, for that matter -- you don't have to be a collection firm -- is entitled to have one licensed agency appointed per quarter. And that is how the court can then monitor the activities of that agency. And actually, this came out of the chancery courts on the service-of-foreclosure complaints. And it's worked so well there that in the chancery courts, I believe, the appointment is good for a year, and it's renewable. So, we are moving towards processes. And also, in Illinois, it is within the court's discretion to appoint a private process server. We may make a motion, but again, in Chicago, in municipal court, the rule is -- the sheriff must be allowed to make the first attempt, even though the sheriff charges more money and has a lower effective rate of return.

>> Susan Moiseev: And has, no offense, more important things to do.

>> Bob Markoff: Right.

>> Susan Moiseev: We have had -- I'm sorry?

>> Not the sheriffs, the summons.

>> Susan Moiseev: I mean, our sheriff doesn't do process serving. I mean, they're too busy with their toys, their helicopter. [Laughter] But we started a process to appoint court officers, but that's more for execution and eviction. We can't -- We haven't been able to regulate the process serving in the same way. So we appoint court officers on a yearly basis. If we get a lot of complaints about a court officer, we don't renew their appointment. But that's a guy or a gal who does the more heavy lifting, the stuff that's a little more dangerous. The processor server itself -- we would prefer they use the people we appoint. And I know you mentioned the judge giving more credibility to the sheriff. And sometimes I look at it, "Well, this is somebody we've appointed," but I've gotten a lot more skeptical about that. 23 years of doing this, you get a lot more skeptical about everything.

>> Jeff Lipman: That's a frustration from the bench is that -- And here's where my frustration is. First of all, the audits and everything are never gonna happen because there's no resources for the audits of the A.G.s and the courts. We can barely cover the day as it is. But from a judicial perspective, process servers, for the most part in our state and most states, aren't regulated. I mean, anyone that's over 18 can serve process. And when it comes to me, generally speaking, it will be a motion. I'll take motions on toilet paper, handwritten paper. I don't care how it comes to me. If it's in my motion basket, I'm gonna address it. But I'll set it for a hearing, and if it's someone that hasn't been served, it'll be set for hearing. They'll see a mediator. Generally speaking, the credit attorneys will recognize, "Oh, there's bad process." They'll resolve the issue. It never gets before the court, because they've resolved the issue on their own. They've settled the case. For the most part, I don't see a lot of bad process where someone comes in and is actually litigated. And I don't know if the rest of the judges here have seen a lot of that. I mean, I see it occasionally, but --

>> David O'Toole: Would you expect this to be litigated?

>> Ian Lyngklip: It gets litigated when there's a garnishment that hits. When they're -- You know, if the garnishment comes and the consumer is just getting the first notice but there hasn't been any money that's been levied at that point, you know, a debt collector is far more likely, in my experience, to stipulate, to look at this, and to set it aside. But when you've got a garnishment or a judgment for \$15,000, \$20,000 and they've hit for the full load, you know, that attorney is --

>> Susan Moiseev: That happens?

>> Ian Lyngklip: I've got one pending right now.

>> Susan Moiseev: On a consumer?

>> Ian Lyngklip: On a consumer. Because they garnished a joint account, and the garnishment -- they hit the daughter of the consumer, and she had the money from the buyout, auto buyout. But, you know, that's the situation where the debt collector -- The debt-collection attorney is gonna have

a problem, too, in setting it aside because they've got to look at their client at that point and say, "I've got to set it aside."

>> Susan Moiseev: But I don't. I don't have to look at their client.

>> Male Speaker: Yeah.

>> Male Speaker: But how many of these cases actually get litigated? I think that, after you go to the courts at a contested case --

>> Ian Lyngklip: All I'm suggesting is that, you know, I have a much higher opportunity to get the stipulation to set aside an improper default judgment when there is no money that is at stake. Once money is at stake, the incentives change for everybody.

>> Daniel A. Edelman: You're also much less like-- It's much less likely to come before a court. Here's the scenario -- the person was not served. A garnishment or citation was issued. The person thinks they have no defense. No lawyer is going to go to the trouble of vacating the judgment if there's nothing there. The person isn't gonna want to pay a lawyer. No lawyers are going to take the case. So, you have a lot of cases where, by virtue of the consumer's ignorance of their legal rights, judgments are entered and enforced without service of process. And you don't have the data necessary to catch the problem. If logs by process servers had to be filed, and they're open to public inspection, believe me, people would go through it and look for anomalies. In addition, if you're relying on either substituted service in Illinois or post and mail in Indiana and other states that allow it, I think, by rule or statute, the plaintiff's attorney should be required to explain why it is that they thought the address or person served has something to do with the person they're suing. I mean, is there a credit-card statement within the 18-month forwarding period that has that address on it? And is that the address they went to? Does the person they served have the same name? You get a lot of situations where a neighbor is served, somebody in a different apartment in a large building is served. We get a return of service filed, it's greeted as presumptively valid, and if the person does not have a substantive claim or defense to raise, it's not gonna get litigated at all.

>> Tom Donnelly: What about that proposal of filing the logs, from the creditor's perspective? Do you have any objection to that?

>> Mike Buckles: No. In fact, I'm gonna recommend that to the Court Officer Deputy Sheriff Association when I meet with them this November. I think it's a great idea.

>> Bob Markoff: I think that the servers we use today -- I'm sure one of them, at least, probably has such a log, or -- because the database is online. I can pull down any service from any of my cases, by return date, by client, and find -- it's not necessarily a log, but it's happening today with computer systems. They're getting very sophisticated, and it's much easier to obtain copies of servers even years later.

>> Pete Barry: But you should also be able to see all the activity that individual processor was taking --

>> Bob Markoff: Yeah. And I think that that's probably doable.

>> Ira Leibsker: I don't think any of the consumer -- any of the collection attorneys on this panel would have any objection to that kind of audit and log.

>> Pete Barry: That's a practical thing.

>> Ira Leibsker: Again, let me point out that we want people to be served. We want them to have good service. We are not trying to just not serve the defendant and sneak in and try to take a judgment against them.

>> Tom Donnelly: But you are not all of the people.

>> Ira Leibsker: I understand that. Because you are not all the judges. I think everyone's got different opinions about it.

>> Tom Donnelly: All of the cases don't get bad service.

>> Ira Leibsker: That's right. But, and listen to me, as they say in law school, you should never ask a question that you don't know the answer to, but I'm gonna ask it anyways. Judge Donnelly, you were in a garnishment court, in which you heard, every day, literally, I'm gonna say probably on an average of 300 to 500 cases a day. Am I correct?

>> Tom Donnelly: That's correct.

>> Ira Leibsker: And out of these 500 cases a day, 2,500 a week, how many people walked in to your courtroom and said, "I wasn't served?"

>> Tom Donnelly: You know, I would get other people who came in --

>> Ira Leibsker: I'm not saying it wouldn't get somebody.

>> Tom Donnelly: You know, 25 to 50 people a week saying that. It's a small percentage.

>> Ira Leibsker: 1% of the people whose money is on the line at that moment in time that's claimed that they weren't served. And they may very well might have been served. They may be lying, maybe not be. But assuming even it's 1%, we're talking about 1% -- We just spent an hour talking about 1% of the people whose money are involved here. I just think that it's a problem. There's no question that this is a problem. There's no question that there's servers out there that are doing stuff illegally. But, in general, people are getting served. People don't come to court because -- partly because they don't have representation, as Mr. Bragg's mentioned, but people are afraid to come to court. And part of the reason they don't come to court, besides being fearful, is that they owe the money. And I think we have to put that somewhat in perspective. We're dealing with a percentage of people who are not paying their bills and avoiding paying their bills and avoiding services. And this is a very small percentage of the entire consumer population. [Indistinct speaking]

>> David O'Toole: Whoa, whoa. Whoa, whoa, whoa. Whoa, whoa, whoa, whoa, whoa, whoa, whoa, whoa! Please, please, please.

>> Female Speaker: The court recorder can only take one voice at a time.

>> David O'Toole: Always defer to the judge. Sorry.

>> Tom Donnelly: And there is, to the perspective, even if it's 1%, it's troubling even for a judge. Because we presume everything is done right.

>> Ira Leibsker: Then let's work together to try to improve that 1%.

>> Tom Donnelly: And when they get in trouble -- this is the thing where I think it's in the interest of the collection team -- do you close up these gaps? Once we begin to doubt the validity of service, the one bad apple spoils the whole bunch. We begin to doubt even the top-drawer firm's service, which is wrong. But it's natural in that we have the skepticism. I wanted to just give one other anecdote as to alternative service, which is what we have in Illinois. You have personal service, you have abode service, and then we have alternative service. And I would get sent down to the trial courtrooms occasionally, where Judge Panarese sits, and we would get hundreds from a certain sole practitioner motions for alternative service. And the clerk told me, "Well, these are routinely signed," and I started to take a look at them. And they claim to have tried to do service at the resident's address, and they said, "We want to mail it to this address we have." And I said, "Well, I want to hear what the argument is for this alternative service." They questioned the attorney, an attorney known to both Mr. Leibsker and Mr. Markoff -- he said, "Well, we go into a database, and we get the last address of employment, and then we serve that address -- the employment address." And this is places where people worked 5, 10, 12 years ago. And I was shocked. I said, "There's no reasonable basis that this will ever get to this person." And I know that the two of you would never do anything like that, but as judges, you don't know. You're sitting there and you get 500 motions with orders -- attached orders. It's very difficult -- we have 118,000 cases, debt-collection cases, pending in Cook County now -- to sort the wheat from the chaff. And I would just implore the collection industry -- I think it's in your interest -- to have some kind of

regulation or some kind of thing that will prevent these bad apples from infecting the good bunch because it creates doubt among the judges presiding over these cases whether it should be done.

>> Bob Markoff: And in a perfect world, you're absolutely correct, and I would love to know that every service is right. By the way, we haven't discussed the idea that a process server, being a human being, can make a mistake in identification for various reasons, and there are mistakes that are made, and I'll grant you that, but they're not purposeful. But we don't live in a perfect world. We try to do the best we can. We try to continually improve our practices. NARCA is an association, just as ACA is an association -- has established ethical aspirations, practices that are beyond the ethical requirements of the practice of law. And in fact, I'd like to publicly thank Judge Donnelly for naming ethical aspirations for the National Association of Retail Collection Attorneys because that name came from a private discussion in his courtroom relating to how we can do things better. We constantly strive to do things better. Are we perfect? No. Are process servers perfect? No. But we will do everything we can to better the practice of law and to treat consumers ethically.

>> Pete Barry: If I could just inject.

>> Bob Markoff: Sure.

>> Pete Barry: With process servers specifically exempted under the Fair Debt Collection Practices Act, how do you bring them underneath the ethical umbrella that NARCA has?

>> Bob Markoff: You're asking -- Frankly, it's the court and judicial supervision. I think in the litigation process, we are very well regulated. And I don't think --

>> Pete Barry: But the process servers are not. That's the weak link, so we're trying to address the weak link.

>> Rozanne Andersen: But we can't jam it into the FDCPA.

>> Bob Markoff: We don't need federal regulation inside each courtroom in the circuit court of Cook County or in Michigan or in Indiana or in any other state. In fact, I did a review of the Illinois Supreme Court Attorney Registration & Disciplinary Commission for the last six years. And these are public records. They're on the Website. Complaints against attorneys who practiced debt collection, credit and collection, were less than 3% of all complaints against attorneys for the last six years. Now, in raw numbers, we're talking about between 125 and 175 complaints a year filed against attorneys who collect debt in the state of Illinois. And each one of these cases is investigated by our state Supreme Court. Now, granted, the investigation may be letter-writing back and forth, but the Supreme Court keeps these records. And if they find a pattern of abuse, they reopen cases and proceed against attorneys.

>> Pete Barry: We're back to the issue, though --

>> Bob Markoff: And so my point is regulation. The judges in the courtrooms who appoint the process servers have the ability to fine them, to sentence them in contempt of court --

>> Pete Barry: That's in Illinois, but how about for the rest of us?

>> Bob Markoff: I can only speak to Illinois.

>> Susan Moiseev: I hear that they have this in Michigan, too.

>> Mike Buckles: Yeah, we had this problem in Minnesota, dude. [Laughter] Going to the legislature and lobbying, get that law changed. If you think it's unfair, we don't need the Feds coming in to every court in the state of Michigan and every other state.

>> The Feds are already in every court in every state in this country under the Fair Debt Collection Practices Act, and processor servers are specifically exempt. I don't see a process server on this panel. I don't see the National Association of Professional Process Servers here.

>> Male Speaker: There isn't one.

>> Pete Barry: I don't know if there is one, but -- That may be the problem, if there isn't one. But I think the process servers ought to be covered by the FDCPA, just like debt collectors and collection attorneys and all the rest.

>> Rozanne Andersen: Well, I would just like to go on record as objecting to that, at first blush, because to send consumers -- to require process servers to send consumers a notice of validation 30 days prior to the act of serving --

>> Ian Lyngklip: You wouldn't require that.

>> Rozanne Andersen: Well, I mean, seriously, that is --

>> Ian Lyngklip: If that's for full-fledged coverage, we could treat those process servers the same way we treat repossession companies who take possession, make them responsible only for failures to serve process or to require them to make sure that they are being truthful when they are obtaining service, securing service, or preparing affidavits and make them comply only with that provision of the FDCPA in the same way that repossession companies are only required to comply with F6. I mean, there is simply no regulation under our state law, and certainly the judges have the authority to do it, and I know that the Judge Moiseev will discipline them, but she's one of many who don't have the time or the resources to personally take each process server -- each of the hundreds or thousands of process servers -- in our state by the hand and wrap them on the knuckles when they simply are lying about whether they've served somebody. [Indistinct speaking]

>> Male speaker: Only one person here has actually gonna defend process servers, so... [Laughter]

>> Rozanne Andersen: No, but with all due respect, if we are literally opening the door to a discussion of Federal preemption using the FDCPA to control the practices that we're talking about, so be it. But otherwise, I would like -- what I'm trying to suggest is that the controls over process servers may be most appropriate handled at the state level. There are some states that license those

individuals. I have no idea if they have a best practices or an ethical practices guideline. I have no idea. And that may be something that we can all learn from this discussion today that we need to know what we don't know. But I do not think the FDCPA, unless we're talking about the benefits of Federal preemption over all these activities, I don't think it makes sense.

>> Dave Philipps: But, Miss Andersen, that's why we have the FDCPA to begin with is because existing state law remedies hit-or-miss actions by judges who are conscientious were not affected. And that's why we have attorneys now -- Let me finish. I let you finish. That's why we have attorneys covered by the FDCPA because, initially, they weren't covered, and then they started advertising, "Hey, we can do stuff that the debt collectors can't do," and they got themselves covered. And we're saying right now, as consumer attorneys, we see a big hit-or-miss problem. We have some good, conscientious judges who will take it seriously and do things, others are overwhelmed, and some couldn't care less, all right? So there's no reason not to regulate them, you know? They're abusing all of us. As Mr. Markoff correctly said, they want good service. As -- it's Mr. Lerch, right?

>> Steve Lerch: Yes.

>> Dave Philipps: Yeah. He wants good service. He probably doesn't like that copy service in Indiana. He knows that's ineffective and garbage, but that's the state rules.

>> Rozanne Andersen: I agree we want good service. I'm just saying the FDCPA may not make any sense whatsoever with regard to this issue.

>> Pete Barry: It apparently made sense to carve them out of it when the law was passed, so why not carve them back in, is my question. And I'm not suggesting -- I'm not suggesting that they have to send a "G" notice or maybe they do have give an E11, but -- you know, the mini Miranda warning -- but it seems to me that the weak link in all of this is the critical link, the due process link -- notice -- the right notice and opportunity to be heard. And without notice, you have no opportunity to be heard, and we're taking and we're giving license to people who really have no vested interest in making sure --

>> Bob Markoff: But why not file the cases, your claims, in the state court action where the process server is alleged to have done something wrong? What you're really -- Wait, wait. What you're really attempting to do is send to Federal Court every question of service that you may have for one of your clients. I would prefer to see issues related to collateral issues related to the judgment, service of process -- they belong in the state court. And your claims for ineffective service, for damages, should be brought in that case in front of the jurists hearing the case. You don't need the Federal courts to be flooded with additional litigation of this nature. And, frankly, it's my belief that, by incorporating them into the FDCPA, we're asking for additional frivolous litigation in many cases that only will serve to line the financial pockets of certain attorneys who spend --

>> Pete Barry: Are you seriously suggesting that the Federal court cannot handle frivolous litigation...

>> Bob Markoff: No, I didn't say that.

>> Pete Barry: ...that the Federal Court permits or tolerates frivolous litigation? Because in my district, it doesn't. I practice all over the country. I'm unaware of any Federal District Court that tolerates frivolous litigation, so that allegation of frivolous litigation, on behalf of plaintiff's attorneys, is absolutely outlandish.

>> Bob Markoff: No, it's extortion litigation.

>> Pete Barry: To suggest that jurists in this country don't know how to handle me or any of the other attorneys on this panel --

>> Bob Markoff: On the NARCA Website, you will find a review of litigation, comments by judges on cases filed by attorneys, against attorneys or collection agencies, and I think Judge Shadur in the district court here in Chicago recently said, "No, this case filed by the consumer attorney does not reach the brass ring of attorney's fees," which is the way that they make money.

And although he did not sanction the consumer attorneys, the playing field isn't level. Consumer attorneys are incited to sue collection agencies and collection attorneys because there are very few penalties if they lose the case. If we, the collection attorneys fight -- Wait, wait. If we, the collection attorneys, fight the case, we then become responsible for the attorney's fees. And even if we're right, we still wind up paying a lot of money, so, therefore, we wind up settling these cookie-cutter lawsuits, many of which are groundless, for --

>> Pete Barry: Like the cookie-cutter lawsuits that consumer collection attorneys rate by the thousands. [Indistinct speaking]

>> David O'Toole: We need to stop. We need to stop. It's question time. It's question time. [Laughter] And I've got a stack of questions here, some of which I can't possibly read, but I'm gonna try. And some of this is actually related to what we're talking about right now. Somebody, I think, in the audience has asked, if process servers were licensed and were subject to FDCPA, would the debt collection attorney be liable in the lawsuits you're proposing? And there are no Federal judges here, so piling on more Federal cases shouldn't be any problem. [Laughter]

>> Susan Moiseev: They're not that busy.

>> Pete Barry: I don't think there would be derivative liability, except in the event that that process server was an employee. If they're an independent contractor, I don't think that liability ties back to the attorney, unless the attorney somehow had slant as to the bad practices of the process server.

>> Mike Buckles: Pardon me, but I think that's disingenuous. The consumer attorneys that say that they knew or they should have known that this process server was gonna do that, and we would still get sued on bogus cases. That's what would happen.

>> Steve Lerch: That's right. And getting right back to what Mr. Markoff was saying, you'd be named in the suit, and you'd have to settle it because you can't afford, based upon what Mike said, to fight it. You'd have to look at your insurance, you'd have to look at your deductible, and you'd say, "Okay, what do you really want to get out of this? That's what's going to happen.

>> David O'Toole: Would it be different then, the attorney's currently being sued under the FDCPA?

>> Steve Lerch: No, it would just be another one.

>> Pete Barry: It would add one more opportunity for bogus lawsuits against us.

>> Barbara Sinsley: I think they'd still be covered under principal agency principles. But, I think, to Pete's point about standards for consumers process is I'm concerned about the judiciary being overwhelmed by different standards for service of process. I think it's -- I applaud the efforts to try to come up with a reasonable way to serve consumers so they have notice. The problem is, a lot of legislatures around the country are coming up with different laws for bad-debt buyers, different laws for consumers, and all of this gets dumped back to the judiciary to look at different standards of how service of process works. So there really should be one standard for service of process, not a whole bunch of different standards for a commercial debt or a consumer debt.

>> Ian Lyngklip: Well, there won't be any different standards, in relation to service. I think the standard is, is it truthful? If somebody's lying, they should be responsible for that. False, fraudulent, misleading statements made to a court, made to an attorney, made to a consumer in order to either request, obtain, or effect service should not be shielded under the statute. It's that simple.

>> Mike Buckles: But, Ian, that's already prohibited.

>> Ian Lyngklip: But not by process servers.

>> Mike Buckles: Yes, it is. Now listen. Every process server in the state of Michigan has to sign a proof of service that's notarized. Michigan has a notary law.

>> Ian Lyngklip: Which has no remedy. Which has no remedy.

>> Mike Buckles: It's a civil remedy. For every violation of that, it's a criminal act. For every criminal act, there's a civil remedy, Ian.

>> Ian Lyngklip: That's not true. That is absolutely not true.

>> Mike Buckles: That's black-letter law in the state of Michigan.

>> Ian Lyngklip: That is not the law.

>> Mike Buckles: It is to!

>> Susan Moiseev: Nobody goes after the notaries.

>> Mike Buckles: No, I don't mean notary. I mean the process server who lied.

>> Susan Moiseev: But somebody ought to go after some of these notaries, the ones that sign papers for the Moors and the indigenous nation and the sovereign peoples. And they get all these notaries signing them, and they're -- Can I say that? [Laughter]

>> Mike Buckles: No, but there is a civil cause of action.

>> Male Speaker: Your Honor, you can say anything.

>> Ian Lyngklip: What the remedy for the consumer is civil cause of action where you have to prove there's underlying damages, that you don't owe the debt. You've lost your rights of due process, and your damages are relegated to proving that you didn't owe the debt? That doesn't -- That makes no sense. It's not a remedy. It's absolutely -- It's vacant of any form of remedy, and it doesn't do the thing that you need most it to do, which is to rein in the process servers and to give them an incentive to actually do the thing, that they're making affidavits, that they say that they're doing. And you need to have proper supervision. It's no answer to say, "Well, you're gonna throw

open the floodgates.” Well, the fact of the matter is, if it's the only way to provide those process servers with an incentive to actually do the thing that they've been hired, paid to do, and that they're swearing under oath that they have done, then that's exactly what this statute is intended to do. It's intended to provide those people with an incentive so that everybody out there gets the message that you don't make money by lying, by throwing out these false affidavits by the thousand. It's the same set of incentives that cause debt collectors to be regulated in the first instance. It's the same set of incentives that brought attorneys within the act again. And I mean, we're preaching to the choir here. I mean, the attorneys who are here on behalf of the debt-collection bar, you guys are out there trying to do your best and trying to do a good job for your clients. Absolutely. You know, you're out there doing that. Fine. We're not talking to you. We're talking to the people who are out there who are purposely seeking out, perhaps, debt collectors or process servers who are not gonna do their best job, and we're also looking at the process servers who are knowingly trying to profit by filling out these false affidavits because they know that many people will not defend the suits in the first instance. No harm, no foul. "I can sign this." They wouldn't defend it anyway.

>> Michelle Weinberg: And I'd like to point out that, if it's formally -- we've all agreed, it's like a tiny percentage of people that come back and say, "I wasn't served," out of the volumes of lawsuits. What kind of floodgate are you talking about opening?

>> Susan Moiseev: Well, there are also all those people who don't know how to get in the courthouse doors and just accept it. [Indistinct speaking]

>> Michelle Weinberg: And I want to say one more thing, because I think that all of the consumer attorneys would probably agree with this. We don't automatically always believe it when somebody comes to us and says, "I wasn't served."

>> Male Speaker: No.

>> Male Speaker: Good point.

>> Michelle Weinberg: Yeah. We don't always --

>> Bob Markoff: Then why don't you -- Wait, why don't you write us letters first before you sue us on cases? Why don't you check with us to see our side of the story before an FDCPA action is filed against us? I don't receive letters requesting my side.

>> Pete Barry: You posed a question. Let me answer that. May I answer that question?

>> Bob Markoff: We send consumers demand letters suggesting that our client says they owe a debt, and they have a chance to dispute. However, our office will receive FDCPA complaints from the Federal Court where this is the first we've heard of it. We didn't know that someone says -- a consumer said that our firm did something wrong. "We'd like to see what you have to say about it. We'd also like to see if maybe this case can be settled before the case is filed in court." We, as collection attorneys, always attempt to settle prior to filing litigation. But we don't get that courtesy in return.

>> Dave Philipps: You can thank one of your NARCA members, Jesse Riddle, for his extreme advocacy of filing SLAPP suits. When I sent you that letter, if I'm a Michigan attorney, and all of a sudden, you're suing Ian in state court for defamation, okay? Jesse Riddle, one of your head NARCA guys --

>> Bob Markoff: No, he's not a head NARCA guy, and he's never -- He's never been on the board.

>> Dave Philipps: Let me finish! Lectured extensively to file SLAPP lawsuits against attorneys. That's why you've cut off that demand letter. You want a bar? Cut off the demand letters.

>> Pete Barry: If you want to put in, if you want to include a litigation immunity, exception, for plaintiff's attorneys to send a demand, within the FDCPA, the next time we amend it, then we'd be happy to send those to you. But otherwise, unfortunately, you're just gonna get sued. That's gonna be the first communication.

>> Bob Markoff: Well, you see, one of the things you do do is you put us in conflict with our clients, and this is an unethical conflict. When in response to a claim that we make, you say, "Mr. Markoff, you violated the FDCPA. We're going to sue you unless your client drops this case or settles this case on favorable terms." That is an ethical problem that I now have with my client that basically will disqualify me from continuing to represent my client because now I'm put in a position of defending myself whether or not your claim is correct. That is why I believe if there are claims to be made, they should be brought in the action pending in the circuit court. But that's just my opinion.

>> Tom Donnelly: I wanted to get back to a point about -- I tend to think that the collection bar is correct in adding in another layer of FDCPA -- regulation is not the appropriate thing. And I think that the state courts are the right place for this. The difficulty is, though, that we don't really have an understanding of how deep the problem is. I think the metric that Ira suggests, in that the motions to quash file is not an appropriate metric. I think there's a lot of problems just from people who minimize the rate problem in America because they said not many have reported, and so, you know, the justice department went and researched unreported instances, in that we can't just look at the motion to quash being filed as an appropriate metric. I'm not sure how big the problem is. I suspect that it's larger than we as judges know, and the New York lawsuit brings that to bear. I think maybe one thing that could be done is perhaps FTC or some other organization doing these spot checks throughout the country and informing the Judiciary, "Your service is better than you think it is," or not as good, by doing some auditing, to give us an idea, and that would motivate regulation or say it's not necessary -- some more information that was valid.

>> David O'Toole: We're going to have to stop there. As this session of the FTC doing something else, I think we have to stop at this point right now. [Laughter] I want to thank the panel for this morning. I hope for the rest of today that there will be more energy, 'cause I think you were a little low-key right now. We're going to take a break right now and be back here in 15 minutes.

>> Female Speaker: Be back at 11:00.

>> David O'Toole: Be back at 11:00. Thanks.