

>> Tom Pahl: All right. Good morning, everyone. My name is Tom Pahl. I'm an assistant director in the Federal Trade Commission's Division of Financial Practices, and I want to welcome you all here to the second day of our debt-collection arbitration and litigation round table. Today, we will be talking about debt-collection litigation issues. Before we get started, I want to go through some administrative matters. For those of you who were here with us yesterday, please bear with me, but I'm gonna go through essentially the same subject matter as we did yesterday. First thing is that the bathrooms are located out near the elevator banks where you came in. Second thing is -- in the case of an emergency San Francisco State University employees will come down here and direct us where to go and what to do. The idea would be if a fire alarm goes off or if there is some other kind of emergency, just stay put, and they will direct us appropriately. The one thing they did say is in the event of an emergency, do not take the elevators. They will take us down the stairs. There are light refreshments over on my left on the countertop. Please help yourselves throughout the day. When we break for lunch, if any of you are looking for a place to go, there is an extensive food court, grocery store, and shopping complex that you can get to by going to the basement of this building. Essentially, you go out to the elevator banks and press "C," and that will take you down to the level where you can go over to the food court. During our panel discussions today, if you could turn off your cellphones or put them on mute, we would appreciate it so no one gets interrupted. I hope all of you have picked up a packet of materials for our program today, which are located on the tables that are off to my right in the back of the room. Each of the panels that we're gonna have today will be a discussion among participants on a particular topic. However, we are also interested in getting the views of folks who are in the audience -- both here in the room and also those who are participating on the Internet. If you're here in the audience and you have a question that you would like the moderator to pose to the panelists, please write the question on the card, which should be in your packet. And if you don't have any cards in your packet, there are also cards located on the table in the back of the room. Just write your question out, hold your question up, someone will come by and collect them, and they will be given to the moderator. If you are watching online and you want to submit questions, you should send them to consumerdebtevents@ftc.gov. And the same process -- some of our folks will print them out, hand them to the moderator. We'll do our best to get the moderators to pose as many of those questions

as possible. Of course, our time is limited, and so we may not be able to pose all of the questions that people submit. We are generally interested in the views of the public on issues related to debt-collection litigation and arbitration. On our FTC Website, we have a place where you can send written comments. So if there's anything that you hear today or you have here after this event that you want to send to us, please feel free to submit written comments through that method. Well, I'm pleased today to have with us Jeffrey Klurfeld, who's the director of the FTC's San Francisco regional office, I guess Western Regional office. And he has a lot of experience in managing debt-collection litigation, and so we are pleased to have him able to speak to us today to kick off our program. So, Jeffrey. [Applause]

>> Jeffrey Klurfeld: Before making my opening remarks, I'll have two of my own housekeeping remarks. Number one, Mr. Pahl indicated emergencies. Since we are in San Francisco, we have arranged that there will be no seismic activity other than perhaps the eruption of spirited discussion this morning. Also, we are honored today -- I should now refer to him as his honor -- and that is Mr. Sargis, soon to be judge for the eastern district of California, in terms of bankruptcy. [Applause] And this is not in the nature of an encomium, because he and I have been spirited opponents on occasion, but I would just say that he enhances the prestige of any bench, and California is very fortunate to have someone of his expertise and stature. Soon to be on the bench, which I understand will be in January, sir? So this will probably be the last time that I can address you as sir rather than your honor. And with that, I will now launch my own opening remarks. Good morning. I am Jeffrey Klurfeld, and I have the honor and privilege of serving as the director of the Western Region of the Federal Trade Commission. I would like to welcome everyone to Day 2 for the San Francisco edition of the round-table discussion on debt-collection proceedings against individuals. Today's focus will be the topic of litigation, and as with our session yesterday on arbitration, you will hear from distinguished speakers representing a variety of interests and providing a variety of perspectives as they explore problems and solutions in a 360-degree forum. Let me make several preparatory comments about litigation. As with arbitration, litigation is an important component of the debt-collection process. There has, however, been an increasingly negative reaction among the public to the propriety or even the organic predicate for litigation. Indeed, the adjective litigious is now expansively used to embrace the full measure of that negativity directed at litigation, often viewed as the never-ending visit to the dentist, an experience

which is to be avoided at all costs. In recent years, the high volume of debt-collection actions has strained the operations of many court systems, causing concern about judicial resources being stretched too thin. Even beyond the sheer number of cases, debt-collection litigation raises a number of consumer-protection issues that need to be carefully considered and addressed. Today, each of our panels is dedicated to a particular aspect of debt-collection litigation. The panel topics will span the life cycle of debt-collection litigation from the first initiation of a suit to the appropriate time limitations that apply to the debt underlying that suit to what level of evidence is required for a prima facie case collection suit to the post-suit enforcement of the judgment via the freezing and garnishing of funds. Finally, we will conclude by tying together these various aspects with a discussion of productive changes and best practices. In this session, participants will examine and offer possible solutions to the issues raised throughout the day. And now for today's bill of fare. First, some great appetizers -- or as we would say in California, heavy hors d'oeuvres served up by our first panels. The presenters will discuss the initiation of debt-collection suits and in particular the facts and issues surrounding service of process and default judgments. Drawing on the knowledge and practical experience of our participants, we expect to be able to compile useful information about the frequency, types of debt, types of owners of debt, and costs and benefits of default judgments. Our second panel, a sumptuous entrée on the menu, will focus on the timing of debt-collection suits and the statutes of limitations that apply to the underlying debts. Panelists will examine how often debt collectors collect or seek to collect on debts that are time-barred. Also important is whether certain types of debts or types of owners of debt tend to involve more instances of collection or attempted collection beyond the applicable time period. Further gustatory pleasure... will then be offered by the next panel. They will tackle the issue of what constitutes in practice a prima facie collection case. Panelists will share their experiences and expertise regarding the evidence that debt collectors typically provide when they file in court, as well as assess whether the quality and quantity of such evidence tends to vary based on the type of debt or the type debt owner. Also seducing your palate will be our fourth panel of the day. They will focus on the post-suit issues surrounding the freezing and garnishing of consumers' accounts. In particular, we will focus on the concern that accounts that contain exempt federal benefits, such as Social Security benefits, are being frozen and garnished after debt-collection judgments. Finally, you will be rewarded by the just desserts offered by the fifth and final -- finally you laugh -- fifth and final panel, who will explore productive changes and best practices. This session will provide a forum to

discuss examples of states, courts, consumer groups, and industry members who have been able to implement concrete ideas designed to solve or improve on issues we have touched on throughout the day. The final panel of the day is an opportunity for participants to share productive experiences from their work or jurisdictions, as well as ask questions about experiences offered by other panelists. This will enhance the purpose of these discussions, which is to take the knowledge we have gained here at the round table and ensure that it translates into thoughtful recommendations designed to implement and strengthen consumer protections in the area of debt-collection proceedings. I am pleased to be here among so many experienced and knowledgeable participants and audience members. And I look forward as they carbonate this event with a lively and informative discussion. And my thanks to the staff both here in the Western Region and especially in headquarters at the FTC, who have worked tirelessly to produce this event. And as any good host or server says, enjoy. Thank you. [Applause]

>> Tom Pahl: Thank you, Jeffrey. One thing that we heard a lot about at our Chicago round table and I heard a fair amount about yesterday was the importance of consumer education about debt-collection arbitration, debt-collection issues. One thing that the FTC is launching today is a new consumer-ed piece related to debt collection, and we thought that it would be interesting and informative for folks to view the consumer-ed piece that the agency is putting out. So bear with us. We'll run the consumer-ed piece and then we'll ask all the panelists to come forward and take their seats.

>> In uncertain times, what can you be sure about? The sun rises in the east. What goes up must come down. Night follows day. But here's something else -- when it comes to dealing with debt collectors, federal law gives you rights. For example, debt collectors can't call before 8:00 in the morning or 9:00 at night... can't curse or insult you... can't demand that you pay more than you owe... can't lie about anything. They can't say the papers they send you are legal forms if they're not... nor can they make up consequences for not paying your debt. And they can't call you at work if your employer doesn't allow it. You also have the right to stop debt collectors from calling you. How do you do that? You have to notify them in writing. Sending them a letter should stop the phone calls, but of course, doesn't wipe out your debt. There's helpful information about dealing with debt at ftc.gov/moneymatters, a Website from the Federal Trade Commission. It

explains the rules of behavior for debt collectors. Take a look -- there are some that may surprise you. If your debts have gone into collection, remember that you have rights. Asserting your rights doesn't make your debt go away, but it does give you a voice. The more you know about how to manage your debt and deal with debt collectors, the better off you can be. After all, money matters. If you think that a debt collector has violated the law, report it. File your complaint with the Federal Trade Commission at ftc.gov/complaint. Your complaint gives law enforcement a lead to follow up on and may stop it from happening to someone else. The Federal Trade Commission is the nation's consumer-protection agency. For more tips on credit and debt, visit ftc.gov/moneymatters or 1-877-FTC-HELP, 1-877-382-4357. All right, if we could ask all the panelists to come up and take their seats and move forward with the program. All right, well, thank you. In the packets that were available in the back of the room, there is a longer description of the bios of our participants. We are blessed to have a diverse and experienced group of folks to work through debt-collection litigation issues with us today. I'm gonna go through and very quickly describe each of the panelists' background to give you a frame of reference, but definitely, if you are interested in more information, take a look at what's in the folders that we have handed out. On my right, starting here, and we've seated the panelists alphabetically. There's no other magic to how we've arranged the room. So, on my right is Paul Arons, who is a lawyer from the state of Washington who bring class class-action suits under the FDCPA. Immediately to Paul's left is June Coleman, who's a lawyer from California whose practice focuses on FDCPA and FCRA litigation. Next to June is Jen Flory, who is a staff attorney at the Western Center on Law & Poverty, a statewide legal-service support center. To her left is William Gargano, who is a commissioner with the San Francisco Superior Court. Continuing around, we have Gail Hillebrand, who is a senior attorney at the West Coast office of Consumers Union. Continuing about our semicircle is Michael Kinkley, who is an attorney from the state of Washington who represents consumers in lawsuits, including consumer class-action lawsuits. Next to him is Scott Maurer, who is a professor of law at Santa Clara University School of Law and a supervising attorney at Santa Clara's civil law clinic. Continuing around, we have Harvey Moore, who is a lawyer whose practice focuses on managing and participation in his firm's consumer-, commercial-, and merchant-collection practice. Mr. Moore also is the president of the California Creditors Bar Association. Immediately to his left is Ron Naves, who is a senior vice president and general counsel of Encore Capital Group, a purchaser and manager of charged-off receivables. Continuing around, we have Manny

Newburger, who is a partner with the law firm of Barron, Newburger & Sinsley. Our next participant is Thomas Ray, who is a partner in the law firm of Peck & Ray, specializing in retail and commercial litigation. Our next panelist is Andrew Estin, who is the chief operations officer of AXZAS?

>> Andrew Estin: AXZAS.

>> Tom Pahl: AXZAS, legal-support service providers. Continuing around, we have Ron Sargis, who is a partner in the Sacramento law firm of Heffner, Stark & Marois. On his left is Tom Surh, who is a commissioner for the California Superior Court for Alameda County. Continuing around, we have Paul Tamaroff, who is the president of the National Association of Professional Process Servers. And finally, we have Ronald Wilcox, who is a consumer-rights attorney based in San Jose, California. The moderator for our first panel will be Dean Graybill, who is the assistant director in the FTC's San Francisco regional office. So we'll turn it over to dean at this point.

>> Dean Graybill: Thanks a lot. First of all, just let me offer my own welcome to everybody here in the panel and in the audience. Looking at the biographies last night, I was pretty blown away by the deep experience of everybody who's sitting here. It's hard to imagine a better qualified group of people to comment on the subject at hand, which essentially will be the process by which debts are reduced to judgment, mostly by default. And much of the discussion will center around how service of process and various methods of service of process relate to that subject. And I think we have until about 10:45 to do this, about an hour and 15 minutes. I'll try to leave maybe 10 minutes for questions at the end. There may be some questions circulating up front. I'll try to get to as many as we can. And for simplicity's sake, I would cast this into four essential categories. It won't be just, you know, lockstep, 15 minutes, 15 minutes, but we'll try touch on, first of all, what is the relationship between the number of default judgments and methods of service of process? We'll be asking the panelists -- and actually, one thing in particular we're interested in is if anybody has studies or hard data that would suggest that the number of defaults is somehow related to a particular method of service, we would certainly welcome anything like that -- any studies, any academic studies, and hard data. So that's the first subject. Second, just a survey of current practice in your various jurisdictions. Otherwise, that could take all day. But we'll try to do that in

some reform that gives us a representative idea of how process is served. And my understanding of it is that it can really vary quite widely state by state, court by court. Third, let's talk about possible changes in law or industry practice that might improve whatever problems there are. I understand, you know, not everybody on the panel may agree that there are problems requiring change, but we can at least discuss potential changes and the pros and cons of each. And then, finally, if there's time, we would simply talk about what are some concrete next steps the various organizations might be able to take, whether it's private associations, whether it's the FTC, whether it's the courts. And finally, just in terms of how to do all this, 'cause we have a rather large panel, you know, if we were discussing this in our living room, I'm sure we would be talking over each other every other second, but this is being transcribed, so if we can just be attentive to that fact and that, you know, talking over each other would be a difficult thing to deal with for her. So, let me just throw it open. The first subject is -- And I'll ask this sort of as a three-part question, in a way. How frequently are default judgments entered in debt-collection litigation? In other words, you know, in a sense, how often are these actions contested. And secondly, is there evidence of a possible relationship between default judgments and in particular methods of service of process? And, again, in that regard, are there any studies or any hard data suggesting that? And I just throw it open.

>> Harvey Moore: Dean, I guess I'll be the first one to address it. The California Creditors Bar Association, as its president, I did an informal survey of our members to try to find out what percentage of cases went by default as opposed to were contested. And on average, we came up with a number of approximately 80% of cases filed and served went by default judgment. Litigation is a last resort. It is not in the creditor's best interest to have to file a lawsuit, and we only file lawsuits when other means of collection activity are unsuccessful. If letters and calls and communications to the debtor to get a voluntary payment plan or a voluntary settlement are unsuccessful, then one of the next steps is to file litigation to try to get a judgment and then have post-judgment remedies to collect the debt. What we do find, though, is litigation ofttime will bring about a settlement in the case. When someone is served, they have a tendency -- I won't say more often than not, but they will call our office and they will try to resolve the case with us either through a lump-sum payment, be it discounted or full, or a payment plan over a period of time that allows them to pay the debt that they might not otherwise have wanted to pay without the litigation. It is not our intention as collection attorneys, be it in California or anywhere in this country, to

effectuate bad service. If we have bad service, we can't get communication with the debtor. If we have bad service, our judgment may not be good. If we have bad service, then we cannot levy on the assets, because somebody's gonna come back and attack the judgment and say, "You did not have good service, and therefore, your judgment's no good." And as a collection attorney, I've wasted my time, I've wasted my client's money, I've gone through the entire process, and my endgame is I have nothing that is valuable to me. So good process is the most important part -- or is one of the most important parts -- of the litigation process, per se. Because it initiates another level of contact with my debtor. We do have -- It's interesting. The Rosenthal Act, which is the California fair-debt-collection practices act, actually has an affirmative obligation on behalf of the debtors. You know, we always talk about the obligations of the creditors and the debt buyers and the debt servicers. The Rosenthal Act actually has an affirmative obligation under civil code 1788.21 that the debtors notify the creditor of changes of address and changes of employment. It would be so helpful if the consumers would, you know, honor that obligation the same way we as collection attorneys are required to honor our obligations under the Rosenthal Act. And I think, in general, collection attorneys in California do honor their obligations. So, the better information we have, the less likely it is that we'll have bad service. We really don't want bad service, and I think that goes without saying. Our process servers provide us with information. We get age. We get height. We get weight. We get a number of descriptive factors to help us if, later down the road, our service is attacked as being improper service. And one of the things we can look at is -- "Okay, this person is, you know, 5'10", 190 pounds, black hair, blue eyes." I rarely get, in my practice, complaints of bad service. I think I can count them annually on one hand. And usually when I do, I can go hold the proof of service that has been provided to me by my process server, talk to the attorney, and say, "This is the description I have." And usually that resolves it right there because usually it is the description of the person that we intended to serve.

>> Dean Graybill: How's that information -- You just talked about the descriptive information recorded. Is that in the actual certificate of service? Is that a log that's available to the public in any way?

>> Harvey Moore: It is in our proofs of service that are then filed with the court. We get actual proofs of service signed by our process server that says, "This is the person I served. This is the description of the person I served."

>> Michael Kinkley: I'd like to respond to Mr. Moore.

>> Dean Graybill: Yeah.

>> Michael Kinkley: First of all, with all the discussion from Mr. Klurfeld about culinary delights, I'm glad I had breakfast this morning before I came. But the problem that exists is that people are not following the recipe -- to train on his theme. The recipe in the law has existed for a long time. Lawsuits require evidence, and that's not being done. The problem isn't with the who are overwhelmed by the sheer volume. The problem is the judges are asking the wrong question. The judges are asking, "How do we handle this huge burden? How do we fulfill our duty to clear these cases?" They should be asking, "Why should we? Why should we, when we get a bad affidavit of service on its face bad" -- And I beg to differ with Mr. Moore. I've seen hundreds of service that, on their face, are inadequate -- on their face inadequate. I started in this business of representing consumers because my 12-year-old son was served and didn't tell me about it. And I found the papers a couple of days later and I said, "What is this? When did this come in?" He says, "Oh, that came in a couple of days ago." I said, "Well, we're getting sued." He said, "Are we poor?" And I said, "Well, yes, but... [Laughter] ...we also need to know these things. I vacated dozens of default judgments -- I intend to vacate thousands more because of the affidavits of service are inadequate. Judges don't have the time and don't take the time to sort through this massive amount of paperwork. They're not following the recipe. The litigation model that Mr. Moore described is the old model. It almost doesn't exist anymore. It exists at the local level only, but that's the smallest part of debt collection. He's talking about the traditional local debt collector. That's not where the debt-collection money is these days. It's in the debt buyers. The debt buyers have, if you look at the filings -- Run your docket sheets. I implore everyone, every attorney. Run the docket sheets. Every county now has the ability to do that. Run the docket sheet, run the debt buyer's names. Those are the mass filers now. The debt buyers don't follow a "let's call and discuss and then litigate." Litigate is not a last option -- it is the first option. It is the only option, and the

reason why is this -- it's securitization. They securitize the credit-card debt in the same way that they did to subprime lending. By securitizing that debt, they made it an investment tool and a commodity. When you sue, you upgrade your portfolio because you take a default, you add attorney fees, you add interest. Now your portfolio's worth more and now you can sell that. So litigation is the first option. It's a different model than Mr. Moore's describing. That model existed 10 years ago and was a primary model. It virtually doesn't exist anymore, except at the local level. The billion-dollar companies -- You know, they're billion dollar in gross revenue each year, compared to the local model that Mr. Moore is describing. The problem in the service-of-process area is it's, again, a cause versus benefit. There is not benefit to scrutinizing or having lawyers scrutinize the affidavit of service that go down in this big stack of defaults. That costs money. You have fixed costs already built in to your business model. Now you have to pay labor, and if you pay labor to go through every file and make sure it's right before you take it down for default, that costs you money. So they don't look at them. You have maybe one lawyer in charge of a large staff printing out paperwork, and nobody's really looking at it, including, unfortunately, the judges, oftentimes. And I can't fault the judges because -- I've talked to one judge who retired rather than act unethically. He said, "I simply can't do the job I'm required to do with the resources I'm given. And I don't think -- If I can't do the job, I shouldn't do the job at all." He thought it was unethical to continue signing defaults. One case I had -- the venue requirement in Washington is that you have to be a resident of that county. The motion for default, the affidavit in support of default, the first line said that my client was a resident of a different county and that the basis for the jurisdiction was her residence in a completely different county. I found 20 or 30 of those in just that simple case in one day looking through those files. Affidavits of service -- I have affidavits of service where two different process servers claimed to serve the same paper on the same day. We have a huge problem with process service in terms of fees. Mr. Moore isn't evaluating the fees that are being charged by the process servers. There are some companies that take kickbacks from the process servers. That was one of our cases. We have a case pending now where process servers have to be registered. But again, it costs money to register. It costs more money to hire a registered process server. So what do you do? You save money, use an unregistered process server. Well, what's wrong with that? Well, there's no accountability. The answer to the question, I think, for the FTC ought to be -- and I'm not sure it's in your rule-making power to do so -- but a suggestion that there be a licensing and bonding for all process servers, that process servers, if they

file an affidavit of service that turns out to be false, that it be declared an unfair and deceptive act or practice under the FTC act. We don't have private-right enforcement. We need to include process servers, if we could some way, in the FDCPA, if it's for a debt collector. The debt collector is responsible for the process server's actions. The process server should be swearing to the amount of money. That's added on afterwards by the lawyers of the debt collectors. It's on the affidavit of service, but it's not the process server swearing to the actual cost. And they upscale the cost by adding preparation of process-server fees, which I've seen as high as \$30 for an affidavit. They bury it in their attorney fee. They charge on the quarter-hour. They charge a half-hour to prepare an affidavit of service.

>> Harvey Moore: You know, Mike, I don't know what world you live in.

>> Michael Kinkley: I live in Spokane, Washington.

>> Harvey Moore: Everything that you have said -- it doesn't apply in my practice. I've been practicing almost 30 years. I am the rule, not the exception.

>> Michael Kinkley: Do you represent Unifund? Midland?

>> Harvey Moore: I represent a number of debt buyers. And your example of what the real world is is not the example of the real world of collections that I deal with. I represent debt buyers. I represent direct-place clients. And litigation is not the first resort.

>> Michael Kinkley: How many cases do you file a month?

>> Harvey Moore: I file in excess of 400 or 500 a month.

>> Michael Kinkley: Okay, how many attorneys are handling those 400 or 500 cases? Two? Maybe two?

>> Harvey Moore: I have more than two attorneys.

>> Michael Kinkley: How many?

>> Harvey Moore: I have three attorneys.

>> Michael Kinkley: Three attorneys, 500 cases a month. Who in here can do that? What lawyer in here can -- You can do that? Good.

>> Harvey Moore: Sir, I have paralegals that I supervise. I am an active participant in my practice, and I will put my model up against anybody else's, because we do review the files. We do review the documents. And for you to say that service of process is a problem and should be regulated, I think, is wrong. We use process-server companies that we review. We keep an eye on their logs. We know what's going on with them. And I think that you are overstating your position. I think service of process -- If somebody files a false affidavit, there are remedies.

>> Michael Kinkley: What?

>> Harvey Moore: There's perjury.

>> Michael Kinkley: When has that ever happened?

>> Manny Newburger: Respectfully, Mike, it does happen. But I'm gonna agree with one thing you said.

>> Michael Kinkley: Well, thank you, Manny. That's a start.

>> Manny Newburger: Well, the idea of bonding process servers does make good sense. I think they should be accountable.

>> Michael Kinkley: We can all agree on that, can't we?

>> Manny Newburger: But with regard to much of the rest of it, you know, when I only represented consumers, there were things I knew. I knew them as surely as the sun rose in the morning and set at night. For example, I knew that every mortgage company wanted to foreclose on widows and orphans and steal their homes.

>> Harvey Moore: On Christmas Eve.

>> Manny Newburger: On Christmas Eve. Okay, I knew that mortgage companies wanted to foreclose on people. And, amazingly, when I started becoming an industry lawyer, what I learned was, in fact, the last thing any mortgage company wanted was to be stuck with another stinking piece of real estate in its inventory. And there's a similar problem here. What you've said about the debt-buying industry is just fundamentally incorrect. Debt buyers spend massive amounts of money on filing and service fees. They do not view litigation as the first option. In point of fact, what drives litigation is, all too often, defective, dishonest, and deceptive information on the Internet telling consumers everything from the fact that the United States never went off the gold standard to the fact that they can eliminate their debts. It is consumer lawyers telling consumers to send letters saying, "Cease communicating," leaving debt buyers with no option but litigation. And it is ultimately the fact that the courts are the place of last resort. But trust me when I tell you this -- the debt buyers don't make litigation the first option because it would cost too much. I see very few instances where consumers are sued where they have not first been through a collection agency and/or a law firm that wrote, that called, that tried to resolve the account. The introductory premise that you asserted is flawed. Now, the notion that process servers should be accountable -- different story altogether. But keep in mind, you've acknowledged, at the local level, lawyers are doing the job. All those debt buyers you described are typically represented at the local level. When Harvey is representing them here, he's the local guy for those clients. And while in any given group, there may be people who break the rules, which is my the notion of perhaps bonding process servers is not such a bad idea. The other premises are just wrong.

>> Ronald Sargis: And I also give Mike the kudos of saying -- Even though I'm general counsel for the Collectors Association, agree with him on several of his points.

>> Michael Kinkley: That's an even bigger start.

>> Ronald Sargis: You like that, right? But part of it was that -- what I heard listening to the Webcast is some of this discussion needs to be moved upstream. One, you were talking about, "Well, it's the sale of securitized debt that creates incentives to do the wrong thing."

>> Michael Kinkley: Is that correct?

>> Ronald Sargis: I said that's what you said. If your premise is correct --

>> Michael Kinkley: Is that one of the points you agree with?

>> Ronald Sargis: I won't say that I agree with it now. But what I'm saying is -- if that's one of the premises, that's what we need to be looking at, rather than saying, "Let's figure out how we make life tougher for the debt collector," because it's not the debt collector -- and be it a third party or be it the debt purchaser that's dealing with it -- to be able to control those dynamics. And the same as you said with if we have a problem with process servers, then let's focus on the process servers, not the collectors. Now, if you find a collector that's colluding with, that's a different situation than the innocent collector who is getting bad service but believes it's truthful, you know, doesn't have a situation where 10 of their services have now come back bad and they're continuing to use the same guy. Some of the data that we had -- and this is the collectors' study from about seven years ago, eight years ago -- of all the accounts assigned for collection, less than one half of 1% had a suit brought on them. And in California, part of that's driven by -- it's a very expensive process. Between the filing fees and the legal fees, as Harvey said, it's the last resort -- collector, creditor believes the debtor has an ability to pay, can't pay. California, a third-party collector cannot go into small-claims court, so there are no discounted fees. It may be that the Washington scenario is different, and litigation is just the equivalent of sending a letter cost-wise. But it's not in the California model because it's so expensive.

>> Dean Graybill: I just want to back up to one point that was made earlier, and that was the overburden of the court system. And I was wondering if our commissioners might have some light to shed on that.

>> William Gargano: What everyone has said -- there's some truth in each one of those things. And we've had a lively discussion, so you've kept everyone awake if nothing else. You know, we're not gonna fall asleep, which is great. Can you hear me? Can you hear me? All right, surely the courts are overburdened with collection cases. I think one of the key things for the court to be involved in is how well the clerks are trained. And at least from my experience in San Francisco, our clerks scrutinize the pleadings that come in. Anyone that practices in San Francisco -- if you're trying to get a default, you've probably gotten a rejection letter. I don't know if any of you practice here and have gotten those, but our clerks -- I don't know if they have some sort of pleasure in doing that, because they're clerks and they're gonna louse up the attorneys' agenda here. But they seem to really get a microscope and go through those. We were trying to think of what is the most common method of service? I have no study to show that I think a lot of the service, though, is substituted service, but a lot of people agree on that. You know, we have mail-in acknowledgement. We have personal service. But I think a lot of it turns out to be substituted service. And our clerks -- I've spoken to the head clerk of the default department -- And this is all anecdotal. It's not scientific. But she has reported that many times, the clerks go over -- They have a little due-diligence work sheet that they follow religiously, where the attempts on service have to be made at three different times -- one at the home, one at the workplace, at different dates, at different times. And if they don't find that that is done to the letter of the law -- Now, this is most of them. There is human error, and some do slip between the cracks. By in large, they send a rejection letter out with great pride and they tell you, "Due diligence has not been effected." So you have to go back to the table and do it again. They do that over and over. If you look through some of our files, there are countless -- not countless -- but there are many rejection letters in there. And I actually see, sometimes, an interplay between the attorney, or sometimes a pro per even, an attorney in the clerk's office -- "I've complied with due diligence. Will you please look at this again and let me know." And they'll get another rejection letter back. If that happens, ultimately, it comes to a judicial officer, and as of almost two years ago, I'm the person that it's gonna come to. It used to go to the PJ, to the presiding judge, but of course, the presiding judge assigned it to

someone else. That's me 'cause I handle the default prove-up hearings. And it makes sense. So if I could resolve it, I'll give a direction to the clerk -- And I know we're overburdening -- You know, we really don't have a lot of time for all of this, but we still have to do it. And I really believe that this is something sacred. The court is the gatekeeper after all, especially in default matters. We have to make sure that things are done right for a number of reasons. Number one, you spoke to that ethical problem, where one judge was just beside himself, thinking he can't go on ethically. Above and beyond that -- It's our duty to do that. We must be sure that due process occurs here. If I can't answer, we even have research attorneys that will look at some little arcane section of the due diligence and what cases are involved in that. We ship it off to them. They get it back to us. Then we either give a directive to the clerk whether they should enter the default or not. They're pretty well scrutinized here in San Francisco. And I must say, at one point, it wasn't a collection case. It was in the context of a child-support case, where there was much more control. The child-support agency was using one or two process servers. And we have a gentleman here that I think is gonna speak to that. He represents the Process Servers Association. They had a veteran clerk who was born and raised in San Francisco. She scrutinized every matter that was supposedly served properly, and she knew all the streets in the city. And she brought it to the commissioner's attention, and she said, "Come here, look at this." Same process server, service of process was made at 9:00 on September 4th down at Fisherman's Wharf. The same person signed that he served someone over in Hunters Point at 9:02. Now, you can't get to those places. Something's going on here. She started collecting a little pattern. Well, the bottom line was -- Well, and this could be done because that agency that was using that process server had control. They got rid of him. He's no longer serving. We get collection cases from all different people. We can't control who the process servers are. But the suggestions put forward here with regard to bonding, with registering - - I think those are ideas on the right -- They're going in the right direction. I took an informal survey of some of the default judgments I signed two weeks ago, and every single one -- I think there were -- Maybe there might have been 12 or 13 on the two days I looked -- had a registered process server. Now, whether or not that's a guarantee or whether or not they could be falsifying a document, sure they can. And we can't catch everyone, but what I'm getting at is that the court does have a role in trying to see that its people are well trained. And counsel is right here. We can't look through each and every case and each and every box that's checked. But our clerks have a checklist that they sign off on before we sign those judgments in court without hearings. Some of

our cases go to prove-up hearings, which we'll get to later. But the ones that are judicially assigned in chambers without a hearing -- we rely on the clerks to go through a checklist, and we check that checklist. If I have a question on that -- because I did the other day in a different issue -- I'll reject it. I won't sign it until we get the matter straightened out. That was with regard to dismissing. It was a different issue.

>> Dean Graybill: Can I ask? You mentioned the term registration, and it sounded like people can be registered or not. What does that mean as opposed to licensing?

>> William Gargano: I'm not really sure. I think it has something to do with -- I think there's more regulation. I'm not sure. It's just not a friend or a non-party. I think they have certain standards. He could probably speak to that.

>> Andrew Estin: If I could speak to that. I wrote and lobbied for the Process Server Registration Act in California in 1972 and became registered process server number one in Los Angeles County, and, yes, I had a bond posted. We were going for licensing, and Governor Reagan, at the time, indicated he would veto any bill that required one state employee to do anything, and therefore, we went to a model of registering with the county clerk in the county you primarily do business. And that covered your ability to serve throughout the state. And most process servers are registered in California. If you serve more than 10 papers per year, you must be registered.

>> Dean Graybill: And what does it actually mean -- that they know who you are and where your office is?

>> Andrew Estin: Oh, yes. You've filed. You've posted a bond. You know, I'd like to say I've been a professional process server for 40 years, and I'm used to some criticism, and it goes a long way. Shakespeare wrote a play 400 years ago called "The Winter's Tale," in which a character was described as a process server who was a rogue who should be spit upon. So, you know, this is nothing new to us. But I must say that there is extensive scrutiny of the work done by process servers by both the law firms they submit proofs to, who will occasionally call, saying, "I think there is a problem with this proof," and with the courts, as has been indicated. Different courts

have different requirements on due diligence to do a substituted service. And we had one from Victorville that requires one attempt prior to 7:00 a.m. at the residence, and there was an attempt at 7:00 a.m., and it was rejected for default. So, you know, there is a lot of scrutiny of the work, and most process in this country is served by professional process servers who do a quality job for their clients. And as in any profession, there may be occasionally be someone who does a bad job. But the fact is that there are bigger problems when, for instance, process is served by mail, which is a ludicrous thing that's allowed in some jurisdictions. Even if certified mail restricted delivery as required, the post office totally ignores that. We used to have an employee go to the post office to pick up our mail so we could get it earlier than when it was delivered to our street address. And he was routinely asked to sign for certified mails. And he was told by employees of post office, "Sign the name it's addressed to." And I'd receive, in the office, certified mail addressed to a dead person, certified mail to someone I've never heard of at that address, certified mail to an ex-employee who had been gone for years. So, you know, when we talk about the need for notice, which is an important thing that was discussed in Chicago and discussed yesterday -- the best notice is using professional process servers who have a vested interest. Our company uses franchised process servers around the country who average 27 years in business, and 40% of our franchisees average 37 years in business. You get quality work if you use quality firms. And, you know, it's unfortunate that we had problems in New York. But when we look at New York, we see a situation where there were red flags that law firms could have used to protect themselves. And our company, AXZAS, has developed seven red flags, and I'll just give you two examples how law firms can protect themselves. Typically, a collection firm serves about 70% of their papers. It varies a little bit, but that's the ballpark. You've got some bad addresses. You've got some deceased people, whatever. If you use a process-serving firm that's serving 98% of your papers, is that good news or is that a red flag that they're dumping papers? And a second one is price. If you've got a going rate, say in New York City, of \$45 to \$50 for reputable process serving firms. And you have somebody serving process for \$12. Think about it. They're gonna pay their server \$3 or \$4. A server can't make an honest living. Let me ask you a question. If you needed some work done on your home and were hiring a general contractor and got three bids and one was \$48,000 and one was \$45,000 and one was \$12,000, would you even consider using the low bidder? So, you know, there's some blame to go around here. We have a list of seven things that law firms can look at or debt owners who use contingency law firms can ask about their law firms

to protect themselves. There's things that can be done. There were other things that were mentioned by the commissioner and that also came out in New York. We have proprietary software we've developed that look for all sorts of things in our database of all the attempts in services, and it includes the attempts, not just the service, 'cause the attempts are often not filed with the court. It looks for things such as -- was an attempt made before the lawsuit was filed? Was an attempt made before our company received the service? Is the process server serving an abnormally high percent of papers received? Were attempts made or services made at two address that physically are too far apart for the time frame shown? So, there are companies, and we're not the only one, but AXZAS has developed this to protect our clients and protect our clients' clients. And it kind of pains me to hear so much criticism of process serving. Some of it is honest mistakes, and when that happens, let's not overreact to it. The fact is that millions of papers are served, and there aren't that many problems with the work done by professional process servers.

>> Ronald Sargis: One quick thing just following Andrew. In anticipation of my new employment 1st of the year, I do want to note that service by mail appears to work well in the bankruptcy courts. And in my 26 years' experience as a practitioner, there have not been major problems. But I think one of the reasons for that is that the debtor, be it the consumer or the business, has the affirmative obligation to say, "This is where I am." And what I've seen in my practice over the years -- part of the problem comes from the fact that the debtor wants to hide from the process server. The debtor wants to hide from the creditor. The debtor really doesn't believe it when we say, "Look, if you can't pay, we don't want to spend a whole lot of time on your account." And so if we collectively come up with a methodology that fosters that communication so at least we know where the consumer is, then that, I think, would enhance the whole process and would do away with some of the problems like Mike was talking about up in Washington in his experience. And it takes away someone's excuse of, "Well, the debtor's hiding from me. I don't know where, and I had a belief that the service was good." It just cleans out a whole lot of problems.

>> Dean Graybill: Yeah, I think Gail had her hand up earlier.

>> Gail Hillebrand: Thank you. We're discussing this partly because not everybody does the process that's just been described, in terms of the red flags, because law firms in every jurisdiction

aren't liable for bad service and therefore don't have an economic incentive to make certain that this kind of auditing and checking is done. We heard about bonding and licensing. I think those are good ideas for more consideration. But I think, also, making the person who is choosing the process-serving company or process server responsible for that bad service is gonna go a long way to adding these things. You know, there's been a factual dispute -- how often does it happen? I can't answer that one, but I can tell you it does happen, because consumer lawyers all over the country, especially in legal services, but also just regular people who represent middle-class people who say, "The client discovered they had been sued and a default had been taken when their wages started disappearing, when their bank account was frozen." Now, some of those people got papers and didn't understand them. And we'll talk later about, you know, what needs to be in the papers to address that. And some of those people probably didn't get the papers at all. In terms of substituted service by mail, I don't think most people, especially when you're being collected on for a 5- or a 6- or a 10-year-old debt -- You don't even know who owns it anymore. It's not realistic to say that consumers should be notifying current owner that debt at their current address. You know, we got that in Rosenthal, but that was a pre-debt-buyer kind of provision, thinking about an ongoing relationship and collection shortly after the first default. And I would say, if we're gonna talk about mail, we should give a close look both to these checklists to your form and so forth into the record, but also to the Massachusetts Small Claims Court Working Group recommendations from 2007. And what they said is, "If the service was by mail, before taking a default, there would be an extra step, and the extra step would require" -- I don't recall if it was the court or party, but the party looking -- The court looking. I think it was the small-claims court doing it -- to actually look at whether that address was any good. And they identified some specific ways to tell -- a municipal record, a Department of Motor Vehicles record, a recent letter from the consumer using that address, actual verification from the consumer, a piece of mail that was sent within the last six months to that address at least four weeks before the service reply mail that was not returned -- that one I think we might give a little more thought to -- and an online verification source, not just the yellow pages or the white pages. But, you know, there are lots of ways you can pay a small fee and get online verification, or there's a catchall for independent verification, but then the collector would have to give the source so the court could have a look. And the idea there is to make sure, before we take a default, that we know the person had the due process.

>> Harvey Moore: Gail, you raise an interesting issue, and that is -- before we send out for service, our office sends out a 30-day letter, in compliance with Rosenthal and the FDCPA. If I get a bounce-back on that letter, if it's returned to me as a bad address, I'm not gonna sue and I'm not gonna send it out for service until I find a good address. So, you know, I agree that, you know, one of the indicia good address is the U.S. Postal Service not sending it back to me. And we do get a substantial amount of mail bounce-back as wrong address, and we do try to find new addresses. But again, it is not in my economic best interest to spend my client's money -- and in California, it's \$205 to, you know, \$365 to file a lawsuit, plus, you know, \$50, \$60, \$70, \$80, \$90 for service. You know, to spend that sunk cost and get a judgment that I can't collect on because it's not good service. I agree with you -- good service is key, and anybody who thinks that a collection lawyer wants to have millions of dollars worth of judgments that are uncollectible because of bad service doesn't understand what we are trying to do in this industry to collect money for our clients.

>> Thomas Ray: I would like to say something when we get a chance.

>> Dean Graybill: Go ahead.

>> Thomas Ray: Oh. Well, I've got to echo what Harvey's saying. My business-model practice in San Francisco follows just the same thing as Harvey does. I mean, we don't want to file suits unless we think we've got a good address. We do the letter writing. Our clients generally send us claims that they've attempted to verify address by two independent sources or they've verified employment. And because it simply does not make economic sense to file suit and have a bad serve and have it come back. Harvey just mentioned the filing fees, but that doesn't cover the cost of the law firm's -- Most of us who work in the collection or legal business do it on a contingency-fee basis. So all of the in-house processing of those lawsuits are covered by us attorneys. And if we can't recover on those claims because they're bad services, we're definitely losing money. And those cases where you do come up, there are recourses, if there is a bad service and somebody comes back and says, "I wasn't properly served." More often than not, it's just because they didn't live at the address where they were served. Our process servers -- We use registered process servers. I monitor them as a part of my firm. I watch each and every time we get a notice or an allegation of a bad service, that comes to my attention, and I look at our process servers. It's

actually fairly rare, in terms of the number of lawsuits that we do file. But occasionally, they do come up. But we look at them and look at them very seriously. And probably half of those times, they come back -- I get the notes from process servers that show who was served, when they were served, what their physical description was, and give that to the defendant's attorney or even to the defendants themselves, and they say, "Yes, that was more" or "It was a relative who was staying with me" or something like that. The others -- we very quickly vacate those judgments and move forward with the litigation. But if I had to do that on a massive spectrum, in terms of the lawsuits we filed, I'd be broke. I'd be in the bankruptcy court. Yeah.

>> Female Speaker: Yeah.

>> Paul Arons: I mean, you're just understating the difficulty a consumer has in setting aside a judgment where they claim there was bad service. You can't just walk in and say, "I wasn't home. I didn't get that service." And the judge is gonna overturn it. There's a great deal more than that involved. To begin with, the consumer has to realize that service is an issue. Find a lawyer willing to represent them, get to court with some sort of persuasive evidence that establishes bad service. That's very tough to do. And following up on something Commissioner Gargano said, in the Chicago hearing, there was references to two reports. One just -- I think a couple judges who grabbed a stack of default judgments and started looking at the process server proofs and seeing that various process servers were 30 miles apart. The same process server was serving process 30 miles apart with a five-minute gap in time, like the example in Commissioner Gargano had. If it's that easy to find, it's got to be a pretty common practice, and this comes back to what Gail Hillebrand said. The reason it happens is the law firm has no incentive to make sure that service is good. The law firm may not know that service is bad. They may want the process server to make good service. But as Andrew Estin said, the process server has a financial incentive to do bad service if they're doing it at a cut rate.

>> Dean Graybill: Well, one thing I've heard -- Why don't you go ahead?

>> June Coleman: Well, I wanted to address some of what Paul said and some of what other people had said. I represent a lot of collection attorneys. I represent them not only with respect to

FDCPA claims but also in front of the state bar. And my experience with collection attorneys is that, if they have someone who approaches them about not being served with a lawsuit, when there's a default judgment been taken, they immediately dismiss that. It doesn't even go before the court except as a stipulation to dismiss. My experience with the courts, and Commissioner Gargano and the other commissioner over there can speak to this. But my experience with the courts is that if someone claims that they haven't been served, the courts are more likely to believe that, because the interest is in justice and in actually litigating the case on the merits. Second of all, there's no benefit to a debt-collection attorney, to a collection attorney, to pursue a case where the debtor has claimed that they haven't received service. Because there's a lot of effort put in setting those defaults aside and starting the lawsuit practice in the process up. So there's an economic disincentive to pursue cases when you have a lot of claims that there are bad services. And the collection attorneys that I know, when they get claims that are bad services, they look at their process servers hard. And if they need to change process servers, they do, because it's not in their economic interest to pursue those types of claims.

>> Michael Kinkley: 90% of the cases go to default. So the debt-collection lawyers don't really have to worry about the service because people cannot afford the resources necessary to defend themselves. They can't pay their debts, they can't hire lawyers. It is true that oftentimes, there are collection agencies -- I'll say most collection agencies. Now, if I put in an appearance, they dismiss the case just because we tend to sue people when we appear in cases. That's my business model, and they know it. Most collectors now, if they find any resistance, even from a pro se person, they sometimes will dismiss. They'll accept the person's position just because, again, it's about volume. They're doing huge volume in the information age. They're not looking at what they're filing because it costs money to look at it. There is no disincentive -- there is no incentive to spend the money. There is a huge disincentive, because if you have the default, then you have now a resource, an asset, that you can collect. They spend far more money after the judgment trying to find a place for good service of the garnishment than they do before the serve the process, because as long as they have the judgment, they have an asset, and once they have that asset, now it's worth investing in that asset to spend more money to find the actual address. I don't know how many times I've seen garnishments being served on a different address than the affidavit of service. If I were a commissioner, I would say, "Wait a minute. Here's the affidavit of service a month ago.

Here is, for the process and the summons of complaint, but here's your garnishment a month later.” What's the discrepancy? What the problem is, when clerks are doing it, they're ill-equipped, with all due respect. Clerks don't know the real party and interest rule in standing. They don't know the hearsay rules. They don't know the exception to hearsay rules. They don't know the intricacies to a boat service and substitute service. They don't know these things. They don't know these things, and they slide by. The Pollyanna approach that I'm hearing from all the debt-collector lawyers here is that there is no problem in California. I can't speak to that. Maybe Mr. Wilcox can. But I'll tell you, on the places that I do know, there is a huge problem, or we wouldn't be having this discussion. And the reason that there -- They talk about, "Well, it would cost us lots of money to vacate.” It's true, but it happens so rarely because people do not have the resources to do it. If every consumer were represented by an attorney, then they would make sure that the process service was correct. But they aren't, so they don't.

>> Ronald Sargis: Since you've chosen to speak in broad terms about, "Collection agencies do this, and collection agencies do that,” again, I'll take you back from our last study. Less than one half of 1% of all accounts are the ones that suit is filed on. The reason it's filed on those suits is because the collection agency identifies where the debtor is, identifies the debtor has an ability to pay, and then files suit. Again, part of that may be driven by California and the cost of the litigation. Another observation I just make here because, you know, we've all become zealous advocates for our respective sides, but if this issue were turned slightly, it may fit the model that we've developed over the years and finding common ground. If, Paul, you went to Harvey and said, "Harvey, look. You know there can be problems out there with process servers. Creates headaches for you. Look, let's come up with a way that we have good process servers that you have confidence in and the system has confidence in in doing it. And I bet you guys would come to a common ground very quickly. Maybe less things to argue about later, but you'd come to a common ground quickly.

>> Paul Arons: I think Gail has an excellent suggestion, which is to make the attorneys, or debt collector, bear some of the liability of the bad process servers.

>> Ronald Sargis: But the problem with that is, if you have that, then you're saying, "Okay, we want to make you, collection agency, into a process server, want you to dictate how they're gonna

do it.” Now, part of that gets picked up already, I think under the FDCPA Rosenthal act. If you're a debt collector, if you're the original creditor in California, subject to the Rosenthal Act, you're using a process server, you're getting all of these bad returns coming back. There's a point you go from, "I'm the innocent victim," to, "Yeah, I'm doing it with the guy," and then the collector or the creditor under the Rosenthal Act will get slammed. So, some of the tools are there, even where Gail has suggested. And maybe, as I said earlier, we move it up and say, "What common ground do we have to say, 'what does it take to get good process servers like you've described, that are doing the work so that I, as an attorney representing a creditor, go, "I never have to worry about this.'" You representing, Ron, if I'm gonna fight with you about something, it's gonna be something other than the process server.

>> See, I think, it's not that the debt collector necessarily has an incentive to do bad service, but the debt collector has no incentive to make sure the service is good.

>> Dean Graybill: Actually -- Commissioner, sir.

>> Tom Surh: Yeah, I wanted to just make a couple of observations about, from the judicial perspective, where we kind of scrutinize the whole process, and that is -- First of all, I wanted to note that, from a judge's perspective, the last thing that we want to be in any situation is a rubber stamp. There's this natural tendency, propensity, you want to question what's being presented, right? And to make sure that before we put our signature on something that it's right. So there is that perspective, and I think this perhaps speaks to the debate that maybe had happened yesterday. I'm sorry I couldn't be here. But in terms of arbitration versus going to court, I think that's one advantage that you have, in terms of consumer protection, is because the court will take an independent look. When it comes to the proof of service, this is the one very clear check that we can make, and that is to at least look on its face and make sure that it's valid on its face. Now, I can't guarantee that we're gonna catch these patterns that Commissioner Gargano mentioned. Because we don't necessarily see the flow and know the city and all of this. But we do scrutinize those proofs. Before a default is taken in my court, I do look. Right now, I'm sitting on small claims, so there's a lot of scrutinizing of the proof of service and so forth because that's jurisdiction. Without a good proof, you do not have jurisdiction to move forward, so we do take, I think, a pretty

good look here. In my court, we're lucky to have two full-time staff attorneys who do the defaults, and so it does get a pretty good review. The other point, I guess, where this review of the service of process would come up is if a debtor -- Let's say it goes forward. There's a default judgment granted. The debtor gets garnishee. He starts losing his wages. That'll bring him into court very quickly. And if we have personal service, and the hearing is set to review the motion to set aside the judgment, if we have personal service, the plaintiff had better bring their process server into the hearing. Rarely happens. And if they're not there, the motion to set aside that judgment is probably gonna be granted. The other thing we were talking about is the substituted service, and just to clarify, what that is in California, you have to make due diligence -- several attempts to serve personally, and then if you can show that you've made that due diligence, then you may serve by leaving the papers with a responsible adult at the residence or place of business and then follow it up with a mailing just to clarify. That's what a subserve is. If you have a subserve, the burden is fairly easy on the part of the debtor, or alleged debtor, if he or she can show that that simply wasn't their residence or place of business on that date. So, it's not that difficult. So, a debtor who comes in and tries to get their judgment set aside, if they can get into court -- and I agree that that may be a barrier in and of itself, but if they can get into court, the burden is not that great. So that's sort of the other checkpoint that we have. I did want to mention, too, that the estimates that Mr. Moore gave at 80%, that seems low to me. I think far more than 80% go by default. It's like, in my rough experience -- I don't keep statistics -- but it's more like 95%. It's a vast, vast majority go by default.

>> Dean Graybill: Has there been any sense that a greater proportion -- well, to the proportion of those that are by substituted service as opposed to personal service?

>> Tom Surh: My sense of it, just anecdotally, is that most of them are substituted service.

>> Dean Graybill: And one follow-up question, too, which goes to -- as you said, you can look at the piece of paper, but you can't necessarily discern underlying patterns. One idea that has been floated before had been the idea of, whether it be by court rule or statute, whatever, requiring process servers to keep a daily log. "I went to the wharf, and I did this. I saw these people. I then got in my car." It's almost like U.P.S. does. And have those be filed and made available for public

inspection so that at least there would be some sense, some transparency, as to what the heck the guy was doing. Dose that sound practical, impractical? What are the pros and cons of that?

>> Tom Surh: Sounds like a huge additional burden on everyone. I don't know if its --

>> Dean Graybill: Do process servers do something akin to that now?

>> Paul Tamaroff: If I might respond to that, as well as a couple of other things. If you want to have a log, if you want to do all that work, then go ahead. It's not gonna really solve your problem, I don't believe. My concern is not just with California but with the entire United States. And my association represents over 2,000 professional process servers throughout the country and throughout Canada, Europe, and other countries in the world. And we do our best to make sure our people are qualified professionals. We have continuing education for them. California association, many members are here -- they have a continuing-education program for their members. But unlike a number of state bar associations, we can't force process servers to join our associations, and so we can't force them to take continuing education. And it seems to me that the solutions that people are discussing are more "after the cow gets out of the barn," so to speak, rather than being proactive. Harvey mentioned that he sends a letter out before they go to litigation. Well, I would say 25% of the cases my office gets to serve a debtor, we have a file that has letters in it to the debtor, and we go to that address, and the debtor hasn't been there for over a year. And what generally happens is the process is not served, unless it's a large amount of money, and then we're asked to go ahead and find the person. And, of course, anybody can be found, as long as the client is willing to pay the money. We do have some process servers that engage in some superhuman feats but not being -- you can't have your fanny in two places at the same time. We've mentioned that California has a registration process, and I know there are a few other states that have licensing processes. I don't place much value in them. For the most part, I find licensing and registration as a means to maintain monopolies for those process servers that are already in business -- or in any -- it doesn't make any difference what type of profession it is. The legal industry, it seems to me, has brought these problems on itself. As far as what happened in New York, that should have been expected. It's not the first time it's happened. It's not the first time it's happened in New York. Happened back in the early 1900s. In fact, New York is where the term "gutter service" was

coined. So, what's happened since then in New York? Nothing. Attorney General Cuomo has gotten some indictments on some attorneys and on a process server company, and maybe somebody's gonna go to jail. And then we can go another 50 years before we have another episode of gigantic proportions like this where possibly 100,000 judgments are gonna be thrown out. What has any legislator in New York done to try to solve the problem? What have legislatures throughout the country done to solve the problem of bad process servers? And there are bad process servers. I've had members of my own associations take the position that they should not be regulated. They want to be like in the old wild West. "I've been doing this for 25 years. Nobody needs to tell me how I'm going to serve process." And they want the marketplace to weed out the bad process servers. The problem with that is that, by the time the marketplace gets around the weeding out the bad process server, that particular process server may have served over a thousand pieces of process, and so many of those default judgments are gonna have to be thrown out again. So, what's the solution? I think the solution belongs with the courts. I know, in Georgia, where I happen to be from, we have been fighting for six years now trying to get legislation that would certify process servers in the state of Georgia. That would require process servers to take continuing education and would require testing to show that they know the law of the state. I'd like to make one comparison, and it happens to be with Canada, and Europe, as well -- not their health insurance, but... [Laughter] Canada uses bailiffs to serve papers. Now, bailiffs can't just wake up one morning when they're 18 years old and decide to go out and serve papers. It's not like rule 4 of the federal rules or the state codes of civil procedure, which are basically patterned after rule 4. If you're over the age of 18, and if you have a temperature that hovers around 98.6, go ahead and serve a paper. It seems to me we should have a little more respect for our process servers. Bailiffs have to go through a couple of years of education before they can serve papers. And, in fact, they are educated to the point they can represent individuals in the small-claims court that they have. The huissiers in Europe, the sheriff's officers, they have an apprentice system. You don't go out and serve process. You spend time as an apprentice for a couple of years with a company before you even get to touch a paper. What do they know that we don't know? What can they do that we can't do? We have a tremendous court system. We have probably the best court system, judicial system, in the world. But the touchstone foundation for a judicial system is to ensure that a person gets reasonable notice and an opportunity to be heard. And if you have bad process servers, that's not going to happen. You've got a problem. Process servers need to be certified as being

competent and having the ability to do their job. And it's the legislatures that need to pass laws or the courts that need to pass rules similar to what we have in the state of Arizona and in the state of Texas. You don't get to serve process unless you first get certified in taking their education program and showing that you know what you are doing. And if you find out that you don't know what you're doing, then you are not going to serve process anymore. And you won't have to be reviewing logs, and you won't have to be reviewing affidavits of process servers because you will have confidence in the process servers that you certify. They will be a part of your court system. And they will be able to do the job that we want them to do because we, as professional process servers, do not appreciate the fact that this kind of stuff happens where people bloody our nose, blacken our eyes, and people come down on process servers, saying, you know, "The dregs of the Earth." No respect for them. And people might start using -- You don't have to worry about it. An attorney doesn't have to worry about it, when he or she hires a process server they know this process server is on a Website put out by the administrative office of the courts saying, "These are the people you can use to serve process. They are qualified." As far as bonding... Bonding is a joke. How many attorneys have ever asked their process server if they carry a professional liability insurance?

>> Manny Newburger: Excuse me. I've actually not only talked to process servers about it, I've been known to ask a sheriff and a county attorney or two who their bonding company was when we thought service had been carried out improperly.

>> Paul Tamaroff: But a bond is basically worthless. How much liability insurance do attorneys carry?

>> Male Speaker: A whole lot.

>> Paul Tamaroff: A whole lot is right. And I carry a whole lot, too, because I know what I'm open to. I use other process servers to serve papers from my company. And when they screw up, I'm the one that's gonna be liable.

>> Dean Graybill: Tell you what. I want to -- we're getting -- I have some questions here. Unfortunately, too many. But want to get to Mr. Wilcox, who I think hasn't spoken yet, and after that, I want to address the basic topic of -- Presently, under the Fair Debt Collection Practices Act, and, I suspect, many laws, process servers are not explicitly covered. And my general -- My general question is gonna be, "What existing sanctions are there --" and I'm sure it varies by state and court -- "for 'A,' that would cover attorney liability for bad process, and/or process servers liability?" Is it just a matter of local contempt of court, or are there, in some states, statutes that actually address attorney vicarious liability? I'm just gonna throw that out. We don't have a year to discuss it, but first, I'd like to hear from Mr. Wilcox.

>> Female Speaker: After Mr. Wilcox, could we also here from Miss Flory, who's been trying to get --

>> Dean Graybill: Oh, yeah, I'm sorry.

>> Female Speaker: Thank you.

>> Dean Graybill: I'm sorry. No, you're right. You have.

>> Ronald Wilcox: There was some discussion earlier about an obligation consumers have to provide their name and address and contact information under Rosenthal. That's accurate, but the problem I see is the consumer is not aware of that obligation. And if you take a look at the statute, it's pretty clear. It says, "The responsibility shall apply only if and after the creditor clearly and conspicuously in writing discloses such responsibility to such person." I review thousands of collection letters every year. I probably see a reference to that obligation in 1 or 2 letters out of every 10. So, now look. If I'm a creditor, I'd be thinking, "Why even bother? They're obviously going to be ducking me. So asking them for this information is worthless." I don't know. Probably depends upon the individual person. Some people may provide it. Others may not. But it's somewhat hypocritical to say the consumer should provide the information when the creditors are not actually conspicuously and clearly providing them the information and knowledge of that obligation. So, you guys who have the ear of the creditors, you may want to talk with them about

that, or you guys who are creditors. To answer the mediator -- or, moderator's question about obligations of what do we do here when a process server runs afoul -- there is a section of Rosenthal that deals with that. If a collection agency or creditor happens to know that service of process wasn't effected there, they're not supposed to continue with suit.

>> Dean Graybill: By the way, the Rosenthal Act, if you could just, for the people that aren't familiar with it, just describe what precise statute that is?

>> Ronald Wilcox: Well, the Rosenthal act is simply California's version of the Fair Debt Collection Practices Act. It's not identical, but it has incorporated much of the federal FDCPA. It also allows for liability against original creditors, which obviously, the federal FDCPA does not.

>> Ronald Sargis: Ron, I'd just like to say we like to think of it as the FDCPA's, the federal version of the Rosenthal Act. [Laughter] The Rosenthal Act predated it.

>> Male speaker: And it's founded 1788 of the civil code. 1788.

>> Dean Graybill: I'm sorry. I missed you there, Jen.

>> Jen Flory: My point is actually related to what Ron Wilcox was saying. I work primarily with advocates representing people with medical debt bills, and one of the big problems there is that consumers actually have no way of notifying their creditors of anything. For example, if I go to the hospital this week and I move in the next month, I have no way of notifying everybody who might send me a bill in the next few years. I could tell the hospital and hope that they pass it on, but I have no contact and I don't know who the other people are who even treated me. When you go to a hospital these days, more and more you're going to get a bill from the hospital, ancillary providers, from laboratories. Chances are you weren't taking down all their names as you were getting treatment. Chances are you don't know where all your medical tests were sent to. So, what we do see is a lot of people who, the first time they've heard of a bill -- and this is sometimes years later -- is when they are served for litigation. So, there needs to be more in how people are contacted prior to litigation. And just some of the comments that were made here that, you know, people are only

going to be sued if they've actually had contact with them or if they have the ability to pay. The fact that I work with legal service clients at all -- none of them have the ability to pay and, they're still constantly being sued over medical bills. And in addition to this problem of having no way of contacting people who might be billing you, we've been working on legislation with this. We've asked hospitals if they would be willing to pass this information on. They represent that they don't even know everybody who might treat you when you go into one of their hospitals. A further thing that complicates it is it's not always obvious up front who the correct payer is of a bill. These things get passed back and forth between a HMO and then the independent physician's association. They will go back and forth on something for a while. Perhaps someone should have been covered by government benefits. So, sometimes the person is not receiving anything for some time, and by then, they've moved or there is an incorrect address or something happened in there. So, a lot of this, it's -- correcting service is one thing, but also things need to happen before the person gets served to make sure that they even know that they owe this company they've never heard of and why they owe them and how they can contest that bill.

>> Ronald Sargis: Jen, your clients, the advocates, suffer from some of the same problems as the collectors, who say, "We get a bill and it's from ABC hospital, but turns out it's the anesthesiologist, who's part of this group or whatever." And, unfortunately, what I see sometimes is the consumer doesn't even tell the hospital when they leave. They know they went to Mercy Hospital, but they don't even tell Mercy Hospital. So, you can't even say, "Okay, anesthesiologist, when you got the mail returned or you didn't know or the address changed from what the hospital first provided you, you should have gone back." So, I mean, that's a little step there. And the other thing I was just going to comment on -- just because someone may be seeking legal aid doesn't mean they don't necessarily have the ability to pay. There's -- there's a scale here as to what some people may think is absolutely necessary to have versus in a business sense of an ability to pay. But if someone really doesn't have it -- they can't put a roof over their head, they can't put food on the table -- then your collection agency's not going to keep going after them because they're going to get \$0.00, which is 0%.

>> Manny Newburger: The question you raised actually is the point, though, that concerns me. Look, personal perspective, I'd be really happy to see process servers who falsify returns held in

contempt or put in jail. I think that's one of the best solutions, but the minute you talk about the issue you raised, which is liability, is the discussion I end up having with my consumer law students, which is the rule of unintended consequences. What is the essence of process service? It is that someone who is independent, unconnected to the case and unconnected to the parties, is serving process. The minute you talk about vicarious liability, you undermine the entire concept of independence, or you turn the law of vicarious liability and independent contractors on its ear. You know, to the extent that the complaint is volume is not an excuse for sloppy legal work or sloppy service, I agree 110%, okay?

>> Male speaker: It's that kind of math that gets the debt collectors in trouble.

>> Manny Newburger: Yeah, I know that. [Laughter] But you know who I represent, so it's okay. [Laughter] But to the extent that the argument is volume is an excuse for creating complete exceptions to well-established legal doctrines, to creating special classes of parties whose burdens of service or burdens of proof are different, I'm sorry. I have to reject that concept. The lady who holds the scales wears a blindfold, and the people who represent the creditors are entitled to the same -- the same equality under the law as the people who are being sued. They're entitled and should be expected to use the same independent process servers as we should expect of you. Yet a well-known consumer lawyer and NACA member uses his son to serve process. I don't hear NACA members screaming about that. The truth is, process servers are supposed to be independent. If there's going to be liability for bad process service, it must fall on the process servers themselves. Because if you create vicarious liability, you call into question the entire set of relationships.

>> Dick Graybill: Although, the -- this just as the other side of the argument that I've heard, which would be that -- and again, there's -- everybody would recognize that there is good process servers, ethical process servers. That may be the majority or whatever. But everybody also has stories of bad apples. And in New York, litigation was one example of that. And so, the thought is that what about attorneys who sort of knowingly hire just that firm that charges \$5 a service and has this remarkable pattern of 100% service and default rates -- I mean -- in the FTC, we do have a sense of agency and vicarious liability that tries to get at beneath that veil. And what's the answer to that?

>> Manny Newburger: There really is something built into the system which is a disciplinary rule called candor to the tribunal. And a lawyer who submits false evidence to a court, which would include process service, has an affirmative duty to correct that record. And a court has the power, as we're seeing more and more courts doing, to say, "Fine. I am referring this lawyer to the bar for disciplinary action. I'm treating thing as an act of contempt of court." In fact, Texas has a statute -- section 82.065 of our government code -- which says a court may treat misconduct as an act of contempt. The solution is that a lawyer who has participated in that has violated the duty of candor to the tribunal and should be sanctioned. But that's different than vicarious liability.

>> Paul Arons: You know, Manny, with all due respect, the idea that courts really police the good ethics and conducts of the attorneys who appear in front of them every day simply does not bear out my experience. A lot of stuff happens. I mean, the idea that a court is gonna discipline an attorney on account of something the process server did simply does not seem realistic.

>> June Coleman: I can actually speak to that --

>> Dick Graybill: If you can make it short, please. Two individuals haven't spoken yet, so...

>> June Coleman: Representing attorneys in front of the state bar, I've actually represented attorneys who have been investigated by the state bar because they have process servers who allegedly falsified the proof of service, or the process wasn't served -- allegedly, wasn't served properly. So, the state law -- at least the California State Bar -- is looking at those issues and is looking at the attorneys. And that's one of the reasons attorneys say if they run into somebody who claims they haven't had service, they're protective of their license. Their immediate response is, "Let's set it aside. The court's gonna set it aside if you bring it to them. Let's set it aside and litigate on the merit of the case.

>> Dick Graybill: Just want to get two individuals that didn't have a chance yet. Go ahead, Ron.

>> Ron Naves: I guess I would bring this discussion back to -- it seems very, very focused upon the service of process, and I think just about anybody would agree that if the service of process is broken, people aren't getting notice and the opportunity to defend themselves, something is significantly wrong. And I don't think anybody would say it should be that way. So I think we're on the same page from that perspective. We've heard very different ideas about what it means to do that. I've heard it should fall back on the courts, it should fall back on the attorneys, and they should be liable for -- it should fall back on various -- various people. And that's perhaps something better left for the experts here on the panel to discuss. But from my perspective as the debt buyer here, I want to sort of reel this in and let's focus on the type of cases that we are sending to litigation, and let's talk about common business sense for a moment. Our business is based upon the ability to talk to debtors. And we want to do that in the most effective and least expensive way. And we don't want to immediately jump to litigation. It does not make sense to jump immediately to litigation. Having been a litigator for 20 years, you know, when I look at attorney's fees and costs and going to the court system, it's very expensive. It's very time-consuming. I don't think anybody in the business world has any different opinion than that. We look to talk to people. We have to do it under some very strict constraints that are imposed, for good reasons, in the Federal legislation that exists. We will make phone calls. We will send letters. We will try to talk to people. Those are the least-expensive methods for us to talk to people and open a dialogue on settling these debts and getting consumers an opportunity to get back on their feet, and giving us an opportunity to try to resolve these issues short of getting to litigation. So, the notion that we debt buyers -- and, of course, I can't speak for all debt buyers, but I can speak for Midland or Encore -- and we don't want to go to litigation first. So, by the time we have sent a case to litigation, it represents a very small portion of the overall cases that we deal with, and we have made many attempts, at great expense, to talk to people via letters, via phone calls, and a number of different ways. Then we hire attorneys throughout the different states to take the next step and go to litigation. My point is that service of process could probably be tightened up, and there are a lot of good suggestions floating around here. But when you look at consumers who have consistently ignored -- assuming we got to the right consumer, assuming we sent the notices we are required to do -- they have ignored letters. They have ignored phone calls. There has been many opportunities for them to engage with us to resolve the issues short of litigation. So, while I hear default rates are very high, and there's a significant number of concerns, I'm starting to look at the channel itself. In

other words, the type of consumer that is being referred to litigation. And the fact that it is a very small percentage of the overall consumers that we deal with, and the fact they have ignored, perhaps, many of them -- not all of them. Mistakes certainly happen. But they have ignored the process and the opportunities to be able to engage creates issues to me that would suggest there are other reasons for the high default rates we're seeing in this industry.

>> Scott Maurer: I just wanted to put some anecdotal evidence in the record that there are problems with process servers in California. At my clinic, we get a fairly steady stream of folks who said, "I learned about this for the first time when my bank account got hit or my wages got garnished." And we don't take them at their word. We make them go down to the courthouse and get the proof of service, or we go down and get it ourselves, and we look at it. And if the -- the proof of service physically describes our client, obviously we're not gonna pursue that. And, by the way, we're not even gonna pursue it. We're only gonna even look at this in the cases where the person doesn't owe the debt. If they owe the debt anyway, what's the point of getting the default set aside? But in those cases where the consumer doesn't owe the debt and they say, "I wasn't served," we look at them, and we have found a number of examples where the statements on a proof of service are just objectively false. "I served this person by leaving it with an adult at his residence. He wasn't there, but I left it with someone at his residence." Well, that wasn't his residence. That was his residence two residences ago, three, four years ago. And what's odd is the collection agency, who is the plaintiff, knew where he was now. They were sending letters to his current address. So, why was he being served at this address from five years ago? And at the end of the day, the garnishment stops, wages get returned. But in the particular -- you know, in some cases, it takes months. And there was a question about -- you know, someone made the comment, "well, when I find out there's bad service, I stipulate right away." Well, if the consumer finds out about the default judgment before any money has been taken, yes. When the consumer's bank account has been hit and their wages have been garnished, and the debt collector has thousands of dollars, sometimes I won't get a stipulation. And then I have to go get the landlord to say, "no, I didn't tell the process server he lived there. I told him he lived there five years ago." And it takes a lot of work, and it takes time to get that motion heard. And meanwhile in California, the wages are still being garnished because the other side won't stipulate. So, that raises a couple points. One -- even though my client gets the money back, they should have a remedy against that process server who

filed a false statement in court, a civil remedy, and they don't. They can write a letter to the county clerk that registers the process server and say, "this is what we did to me." And who knows what will happen to that, and what incentive does my client have to do that other than altruism? The other point is, aside from vicarious liability, the attorney that won't stipulate to set aside that default judgment when I give them all the evidence about this was bad service -- that's not vicarious liability. That's ratification, and there should be a liability on the attorney in that kind of situation.

>> Dick Graybill: We have about four minutes left. I think a minute or two extra won't hurt. Got a lot of questions. They're all good. I will only be able to get to two or three of them. Well, actually, many of them were sort of indirectly answered, so I'll try to restrict myself to about three here. The first question -- and I'll recite it verbatim. "Please speak to one, the role of the sheriffs in service of process, and two, whether the diversity of laws regarding process servers across the country is itself a problem."

>> Andrew Estin: Let me address the sheriff's issue.

>> Dick Graybill: If we can hear from both sides, I'd love it.

>> Andrew Estin: For sheriffs to serve civil process at a loss to the taxpayers is ludicrous. And there is no sheriff in the United States that charges enough to cover their true expense. Every sheriff that's ever asked what it cost ignores things like retirement benefits and health insurance. In North Carolina, for instance, where by law, all lawsuits must be served by the sheriff, the sheriff charges \$15. And we recently had a situation in North Carolina where a person with an outstanding warrant in Durham committed a serious act, and there was an investigation why wasn't this person off the street? And after having hearings about the problem, the solution was they authorized an additional \$500,000 to hire four more deputies and four more clerks to process part of the 50,000 unserved criminal warrants in Durham county alone at a time when 90% of the sheriffs in the Durham County Sheriff's Office were serving civil process at a loss to the taxpayer. Respectively, to my colleague Paul Tamaroff, sheriffs or bailiffs are not part of the solution. Not only should they not be serving at a loss to the taxpayer, but when private process servers serve, they're paying income tax and business profit taxes and helping with the problems. So, they are absolutely not part

of of the solution. Ant they're not needed. In Texas, after years of them serving all of the process on a monopoly -- it was constables in Texas -- now the private sector is doing it with no problems for litigants to get their cases served. Here in California where it's not mandatory to use the sheriff but 8 of the 58 counties, the sheriffs no longer serve lawsuits or subpoenas. They'll still serve writs and certain other things. So, the sheriff should not be part of the solution. It is ludicrous in an era when every state and almost every county has deficits for them to serve huge losses where tens of millions of dollars a year are being done to subsidize their negative cost service.

>> Dick Graybill: What about the issue of lack of uniformity of law in terms of the rigors of rigorousness of service requirements?

>> Paul Tamaroff: That is not a problem if we deal with each state separately. Each state should have their laws designed to ensure that you've have got qualified process servers. I know my association -- The National Association of Professional Process Servers, California Association of Legal Support Providers, Washington State Association -- we have about 10 associations around the country. We would be pleased to work with all of you, the Federal Trade Commission to come up with a model statute that can be adapted to any state to make sure that they have qualified process servers who are available to serve the legal community. And I think that that is really the way to solve the problems. That and ensuring that process servers have to carry professional liability insurance so that they can be sued if it's necessary. These are the ways to solve problems -- make sure people are qualified, and you don't have serious problems after that.

>> Michael Kinkley: I just want to say I agree wholeheartedly with Mr. Tamaroff. I think the common ground we have, the debt collectors, with the industry -- and I've spoken to the Washington Association -- he and I have talked about the fact that Washington's statute is inadequate. As far as registration -- and it's up to the attorney to enforce it because you're not allowed reimbursement for the process server fee unless the process server is registered. Having said that, you're supposed to also put the registration number on the affidavit of service in the county of registration so there's accountability of some kind -- very little. \$10, you're a process server. It isn't done. Judges are signing fee shifting for that process server. And on the face, it's lacking a statutory element. We have thousands of these. We have two class cases -- three class

cases going with thousands and thousands of judgments. I have another point, though. If we had a statute like you're talking about with licensing that was uniform to be adopted with variances in each state, that would be a very good thing, and I think we would all agree to that 'cause it takes the burden off the process server. We're suing the lawyers who tried to collect those reimbursements. Where's the process server's accountability at? We can't touch 'em. The second thing is that we have debt collectors -- you know, if we had process servers like you two, we wouldn't have as many problems as we have because you're taking personal accountability. But you charge for that. You're more expensive than the other guy. And for a debt collector who's doing 500 cases a month, that difference of \$20 that he might not get back, he says, is a big deal. Plus, you guys won't stomach the guy who says, "well, we'll prepare your affidavit of service for you so we can charge for that." And most debt collectors do that. It's a profit center for them. It's not an innocent, hands-off, independent party. They make money on the process server in addition. One more thing. What I'm calling for here is transparency, accountability, accountability to the process server, the attorney, the debt collector, and how about this, judged, debt collectors -- How many times have you seen a process server who did something wrong, who was in two places at once? You caught somebody doing that. How many of those judgments did you require the attorney to go back, bring that stack in with a series of vacate? Did you go back and vacate all of the judgments that that process server did or did you just do it in the one case?

>> Male speaker: That's a good question. I wasn't actually the commissioner that did that, and I don't know what she did.

>> Michael Kinkley: My experience is -- and we're filing lawsuits now on a case in lack of subject matter jurisdiction. Thousands of judgments were entered without the court even having the power to act. Jurisdiction is defined as the power to act. Without subject matter jurisdiction, the judgment is void. We're filing lawsuits to vacate all of those. When you find a process server that has been bad, there ought to be more than vacating the one judgment. You ought to go back and look at all of the judgments. Now, what a burden does that put on the creditor? So, we do need a system change because the creditors -- not only debt-collector creditors -- are being affected if we go back and vacate. When you have one bad process server, you should go back and vacate everything he's ever done. Do you all agree?

>> Dick Graybill: Okay, we're gonna have to close. I saw your hand go up last, and for that principal reason, you can speak lastly.

>> Gail Hillebrand: I agree with what's been said, but I wanted to comment on the implication of the question that uniformity is good in itself. I think there's a very big difference between a minimum uniform Federal standard and allowing states to go forward with their own processes and do more. That's the basic rule of consumer protection in this country. There's a possibility for the FTC to say these problems don't have to wait to be solved until every state legislature and every court figures out the resource issues and the nuances of individual state laws. The FTC can look at minimum standards, and that's very appropriate, and it doesn't not count the possibility of keeping those places where the courts are ready to do more, where the state legislatures have or are willing to do more.

>> Dick Graybill: And that concludes this round. I want to thank everybody. That was fun. [Applause]