SMALL CLAIMS TASK FORCE

APPENDIX TO REPORT ON THE MARION COUNTY SMALL CLAIMS COURTS

MAY 1, 2012

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For Immediate Release
February 14, 2010

Contact: Kathryn Dolan
317.234.4722

INDIANA SUPREME COURT CREATES TASK FORCE TO EVALUATE MARION COUNTY SMALL CLAIMS COURTS

The Indiana Supreme Court has created a task force to review the practices the procedures used in the Marion County Small Claims Courts. Critical reports in the national press suggest litigants in those courts do not always have the same access to justice as litigants in other Indiana courts. As part of the review, the Court has directed public hearings be held. Ultimately the Supreme Court will determine whether any changes are needed in the Marion County Small Claims Courts.

The nine Marion County Small Claims Courts primarily handle collection disputes and landlord-tenant claims involving up to $6,000. In 2010, the courts handled approximately 69,500 new cases. Supreme Court Rules require small claims court trials to "be informal, with the sole objective of dispensing speedy justice." In all other Indiana counties, small claims cases are part of the regular caseload of the circuit and superior courts—not a separate court.

The reported allegations against the courts include accusations that large filers, such as property managers and collection companies, receive special treatment in the courts. For example, an alleged practice involves "forum shopping," which means the plaintiff files a case in a court that lacks reliable access to public transportation, in hopes that the defendant will not be able to attend the hearing and a default judgment in favor of the company will be issued.

The Marion County Small Claims Courts are organized along township lines and funded at the township level. Questions have been raised regarding the township trustees' influence on court staff and operating budgets, which affect judicial independence. In several townships, the judges do not have input into the courts' budgets and learn of changes or cutbacks only after the budget has been determined. In other Indiana counties, judges go to the County Commissioners for budget approvals. Marion County Small Claims Courts also charge different court costs than other Indiana courts.

The Marion County Small Claims Court judges, with the participation of Circuit Court Judge Louis Rosenberg, have started to take action in response to these allegations, including a plan to post brochures detailing litigants' rights and responsibilities in the courtrooms.

The task force is made-up of Indiana Court of Appeals Judge John Baker and Senior Judge Betty Barteau. Both have extensive experience at every level of the Indiana court system, including small claims cases. They will gather information by meeting with the judges and staff and from public hearings. The hearings will be scheduled for late February and early March in Perry and Pike Townships. The goal is to get feedback from small claims litigants and attorneys.

After reviewing current practices and procedures, the task force will report to the Indiana Supreme Court Committee on Rules of Practice and Procedure. The task force may make recommendations on needed adjustments in the courts depending on what it uncovers. The Rules Committee will make recommendations to the Indiana Supreme Court about any necessary changes in rules or procedures in the Marion County Small Claims Courts. The Supreme Court will determine whether any procedural rules need to be changed.

For Immediate Release
February 20, 2012

Contact: Kathryn Dolan
317.234.4722

THREE PUBLIC HEARINGS SCHEDULED TO REVIEW MARION COUNTY SMALL CLAIMS COURTS

The task force created to evaluate the Marion County Small Claims Courts has scheduled three public hearings to review the practices and procedures used in the those courts. The task force was recently created by the Indiana Supreme Court after critical reports in the national press suggested litigants in those courts do not always have the same access to justice as litigants in other Indiana courts. The schedule for the public hearings is as follows:

Wednesday, Feb. 22 at 6 p.m. EST
Perry Township - Small Claims Court
4925 Shelby Street, Indianapolis

Wednesday, Feb. 29 at 6 p.m. EST
Pike Township – Small Claims Court
5665 Lafayette Road, Suite B, Indianapolis

Wednesday, March 7 at 6 p.m. EST
Marion Circuit Court- Marion Circuit Courtroom
200 E. Washington St. #W122, Indianapolis

The nine Marion County Small Claims Courts primarily handle collection disputes and landlord-tenant claims involving up to $6,000. The courts handled approximately 69,500 new cases in 2010. Supreme Court Rules require small claims court trials to "be informal, with the sole objective of dispensing speedy justice." Marion County is the only county in the state that has a separate court for small claims cases.

The reported allegations against the courts include accusations that large filers, such as property managers and collection companies, receive special treatment in the courts. For example, an alleged practice involves "forum shopping," which means the plaintiff files a case in a court that lacks reliable access to public transportation, in hopes that the defendant will not be able to attend the hearing and a default judgment in favor of the company will be issued.

The Marion County Small Claims Courts are organized along township lines and funded at the township level. Questions have been raised regarding the township trustees' influence on court staff and operating budgets, which affect judicial independence. In several townships, the judges do not have input into the courts' budgets and learn of changes or cutbacks only after the budget has been determined. In other Indiana counties, judges go to the County Commissioners for budget approvals. Marion County Small Claims Courts also charge different court costs than other Indiana courts.

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The task force is made-up of Indiana Court of Appeals Judge John Baker and Senior Judge Betty Barteau. Both have extensive experience at every level of the Indiana court system, including small claims cases.

COPY

TRANSCRIPT OF A PUBLIC HEARING

HELD ON FEBRUARY 22, 2012

AT A CONFERENCE ROOM AT THE

PERRY TOWNSHIP MUNICIPAL OFFICE BUILDING

4925 SHELBY STREET, INDIANAPOLIS, INDIANA

BEGINNING AT 6:00 P.M. ON FEBRUARY 22, 2012

JUDGE JOHN BAKER, PRESIDING

Wm. F. Daniels, d/b/a
ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel IN 46032
(317) 848-0088

PERSONS PRESENT:

PERSONS AT THE HEAD TABLE

Judge John Baker

Judge Betty Barteau

Lilia Judson

Elizabeth Daulton

LIST OF COMMENTERS:

Richard Bovey

Bethany Nine-Lawson

Stephen Lerch

Jerri Coverstone

Ralph Gerdes

Judge Doug Stephens

Sen. Brent Waltz

Beverly Heid

Michael Massey

Rick Madden

Christopher Bottorff.

Greg Bowes

Jimmie Crawford

Judge Clark

Judge John Spear
Judge John Kitley, Jr.
Don Levenhagen
Kevin Hendrickson
Judge Robert Spear

OTHERS ATTENDING BUT NOT SPEAKING:

Judge Louis Rosenberg.
Dianna Dietz
Eugene Akers
Karl Ryan
Jeff Gallant
Brian Alsip
Dianna Dietz
Daniel Sandlin
Jeff Gallant
Karl Ryan
Eugene Akers
Kassandra Green
Dustin H. Allen
(And possibly others.)

1 [February 22, 2012. 6:00 p.m.]
2 JUDGE JOHN BAKER: Good evening.
3 My name is John Baker. I'm a judge with the
4 Indiana Court of Appeals. And I'm joined this evening
5 by Betty Barteau, a retired judge and assigned as a
6 senior judge to the Indiana Court of Appeals.
7 The Chief Justice of our State, Randall T.
8 Shepard, asked that Judge Barteau and I be a task
9 force to investigate some expressed concerns about the
10 Small Claims Courts in Marion County.
11 We are aware that there have been criticisms, and
12 we are also aware that some of those criticisms
13 haven't been addressed.by the judges of the township
14 courts here in Marion County.
15 We are going to conduct fact-finding hearings this
16 Wednesday, next Wednesday in Pike Township, and the
17 following Wednesday in the Circuit Courtroom of Marion
18 County, in the City-County Building.
19 We want to first of all express our appreciation
20 to Judge Bob Spear, for making sure that we had this
21 facility available to us this evening, to the Trustee
22 of Perry Township for accommodating us. We want to
23 secondly thank all of you for making yourself
24 available and coming to share your insights.
25 Be mindful that we will try to come up with any

1 recommendations that we think that might improve the
2 township courts, and we will pass those along to the
3 Rules Committee of the Indiana Supreme Court, who will
4 then, in fact if they feel that rule changes are
5 necessary, send the same to the Supreme Court for
6 action.
7 Our timetable is that we would like to complete
8 the gathering of information by mid-March, so that we
9 will have an opportunity to sift through all that we
10 are going to discover and prepare findings of fact and
11 conclusions, so that we will have something to submit
12 to the Rules Committee by May, or at least no later
13 than June.
14 We are joined this evening by the State Court
15 Administrator, Miss Lilia Judson; her assistant, an
16 attorney with the State Court Administrator, Elizabeth
17 Daulton; my law clerk, Mr. Tim Nowacki, who's greeted
18 you, the tall gentleman back here who gave you the
19 sign-in sheet.
20 The procedure that we are going to follow this
21 evening is that we are going to ask all of you to be
22 as patient as you can be. We are going to ask that
23 you-- We're going to call your names off from the
24 sign-in sheet. We have asked that you give your
25 contact information, in case we need to follow up to

ask any further questions.

If you can, please speak your comments, try to limit them to three minutes. I know that some of you have much more to say than that. And we would encourage you to do so in writing. We will make available to you-- There is a sheet in the back, I believe, where you can write your comments down and, if necessary, just send a letter to me or to Judge Barteau.

Senator Waltz, we thank you, sir, for being here. We appreciate having the legislative branch to share in this process. And we may well be called upon to make recommendations to the General Assembly. Senator, we appreciate the fact that you are here as well.

Oh, I have been asked that we remember to turn these things off. I think that probably means you do that, but I sometimes forget, SO I hope you don't.

Tim, if you'll bring me the sheet.

We also have taken it upon ourselves to secure a court reporting service so that we don't have to trust our memories. And I suspect some of you will think that's probably well advised.

There's some chairs up here in the front, if some of you would like to make yourself a little bit more

1 comfortable.
2 I also acknowledge the presence of many of our--if
3 not all of our Small Claims judges. I am not going to
4 go around and introduce you all.
5 And we are also joined by our Circuit Court Judge,
6 Louis Rosenberg, who has worked with our Small Claims
7 judges to try to come up with some best practices to
8 improve the quality of services in the Small Claims
9 Courts. And we are already aware of their efforts,
10 and applaud the same.
11 Our first speaker will be Mr. Richard Bovey.
12 Mr. Bovey?
13 MR. RICHARD BOVEY: Thank you, your
14 Honor.
15 First, I want to kind of use a predicate:
16 I have a pending case right now in Lawrence
17 Township Small Claims Court, and I don't really know
18 if it's appropriate to get into the facts or the
19 merits of the case.
20 JUDGE JOHN BAKER: Probably not.
21 I think it might be advisable for me to say,
22 although we are on an appellate court, we are not
23 going to resolve appeals tonight.
24 MR. RICHARD BOVEY: I understand.
25 JUDGE JOHN BAKER: But I think that,

unless it has something to do with telling us about the processes or procedures, I think we would be well advised to just try to confine our comments to the more generalities.

MR. RICHARD BOVEY: Okay. I will do my best--

JUDGE JOHN BAKER: If you would, sir. Speak up so everybody can hear you.

MR. RICHARD BOVEY: I had an angiogram procedure done at the Indiana Heart Hospital on October 14, 2010. They left a tube in me, buried under a dressing in my right groin area. The tube was not discovered until I went to remove it in the shower the following evening, and there was the tube. I had an angiogram at St. Vincent a year earlier, and never had a tube in me.

I went to the emergency room at Indiana Heart Hospital after calling them, because they said, "Don't remove the tube; you can bleed to death. Come here, or call an ambulance to come here."

I went in. I got billed for the procedure, I got billed for the emergency room.

I have disputed that, because I do not believe there was a proper rendition of services. And I felt their bill--at least my share, co-pay--was

unreasonable.

I had the hospital bill collector call me several times, and every time I tried to address the problems I had with the procedures, I was told, "I don't want to hear that; I just want to hear how you're going to pay this bill." And I asked to speak to someone in authority, such as the hospital administrator; never had anyone call me back.

I thought it was a dead issue because of what happened and how it happened. They collected about twenty thousand dollars from my private health insurance company, and I thought that was more than ample compensation under the circumstances.

The next thing I get was, September 2nd, 2011, was a cheap letter--on cheap, thin stationery--with a lawyer's letterhead. And it basically said, "You owe fifteen hundred and two dollars. You make the payment, or you're going to get sued." It didn't say why, what, when, or how.

So I called the number in the letter, and some lady answered, and she said, "First of all identify yourself, give me your Social Security number." And I said, "No, ma'am, I'm not going to give you that, because I want to know, first of all, what is this about this letter I got, asking me for fifteen hundred

1 and two dollars."
2 And she said, "I need your Social Security number,
3 or I'm not going to tell you." And then I said,
4 "Ma'am, I need to know what this is about before I
5 give out my Social Security number to a complete
6 stranger." And then she said, "Well, when you feel
7 like telling me your Social Security number, call me
8 back." Click.
9 I didn't hear anything more until two days before
10 Thanksgiving, a new, shiny white constable's car pulls
11 up in front of my home, from Decatur Township. I'm up
12 in Lawrence Township, the far northeast corner of
13 Marion County. And, as you know, Decatur Township is
14 down there by the airport, the so-called "rust belt"
15 of Marion County.
16 Once I got the suit papers, then I knew what they
17 were suing about; it was over that angiogram
18 procedure/emergency room and the tube incident.
19 And I asked the chief clerk there, "How can I be
20 sued down in Decatur Township Small Claims Court? I
21 live up here in Lawrence Township." She said, "It
22 doesn't matter; you can be sued anywhere in Marion
23 County." That's what she said.
24 I said, "Well, Indiana Heart Hospital is up here
25 too. Even the debt collector's on 55th Street, on the

east side of the city." And that's the way it was left.

She did not suggest, but I made a motion to have venue transferred to a preferred venue in Lawrence Township. I did that on my own. And once I did it, venue was indeed transferred; it's up in Lawrence Township.

Here's my gripe, and I think it a legitimate gripe: I don't think consumer defendants should be sued in a remote township court where they don't live and where they didn't transact any business. I think that's fatally flawed.

And my opinion is, we need a rule, a new rule to prohibit that practice. Because I even checked with the taxicab: "How much would it be to run me from my home down to Decatur Township and back?" I was quoted like a hundred twenty-five bucks. I may as well pay the bill, rather than start paying cab fares to get back and forth to the court.

I checked with IndyGo, the bus service, and I would have to get to the Castleton somehow and then try to hitch a bus downtown. And then from downtown I'd have to go out Kentucky Avenue to get to Decatur Township. It would take me a day.

That is my comment. I appreciate it.

JUDGE BAKER: Some of you have signed the sheet and have indicated that--you haven't indicated that you want to make a statement. I want to make sure that I am reading this right.

I have Bethany Nine-Lawson.

MS NINE-LAWSON: I actually indicated that I did not, but I do now.

JUDGE JOHN BAKER: Please do.

MS NINE-LAWSON: My name is Bethany Nine-Lawson. I'm a law student at IU. I am involved in a law student project with the professor and five other law students about the Small Claims Courts in Marion County.

We've had the pleasure to meet with Judge Rosenberg, Judge Michelle Scott, and other various people who are related to this particular area, and they've been immensely helpful and respectful of what we are trying to do.

I particularly would like to comment on a recommendation that we had regarding the landlord-tenant court, which has been the focus, rather than the collections aspect of small claims. In particular we would like the form that is used against tenants that are being sued for eviction, that that form be uniform across all townships, and that it include the

following: Some sort of non-English translation for folks whose first language is not English. Perry Township, as we already know, has a Chin population, in particular, that needs this service.

Also, a statement of their rights to an interpreter, which is required to be given to them free of charge.

Also we would like to request modifications for a disability, if they're hard of hearing, if they're in a wheelchair and want a way to get into the court so that they can have equal access to the proceedings.

We would also like a statement that suggests that, if they're interested, there are services available to them where they can get legal assistance from Indiana Legal Services, and even the Bar Association's referral line. Additionally, a statement about housing assistance, local organizations that they can call. And this could be a separate information sheet as well, because obviously that's a lot of information for one piece of paper.

And then finally we would suggest the offering of alternate court times. Most of the people, if you're being sued for eviction, tips are--if you're working, you're working a job where you don't get to just take off when you want to; you're working a job where you

1 have to go in on time or you get fired. So it's going
2 to be closer to court, and if you're to be there at
3 nine o'clock and you're scheduled to work, you're not
4 going to go to court, you're going to go to your job.
5 So offering them evening hours or Saturday hours,
6 which is done in some other counties in Indiana, and
7 then widely across the country, I think is probably
8 more in the spirit of Small Claims Courts.
9 But those would be generally our recommendations.
10 We also have a twenty-two page report, which we
11 may have already submitted to you, but if not, we'll
12 be happy to provide a copy.
13 JUDGE JOHN BAKER: Judge Barteau and I
14 have received that via the law school late yesterday
15 afternoon.
16 Thank you, ma'am.
17 The next person to indicate that they wish to make
18 a statement is Stephen Lerch.
19 Mr. Lerch?
20 MR. STEPHEN LERCH: Your Honor, thank
21 you.
22 My name is Stephen Lerch. I am a law partner in
23 the firm of White & Lerch. We're located in Fort
24 Wayne, Indiana. We have a staff of four attorneys and
25 forty-five employees, and our practice is limited to

1 debt collection.
2 Now I want to make this very clear: We don't do
3 any landlord-tenant, so anything I'm speaking about
4 right now has nothing to do with landlord-tenant,
5 except for one thing Bethany did say: I think we
6 would appreciate a standardization of forms as to the
7 notice of claims.
8 But I would like to expand that to all ninety-two
9 counties in this state. There are ninety-two--well,
10 if you count nine township counties, there are over
11 one hundred Notice of Claim forms alone.
12 JUDGE JOHN BAKER: I think there are
13 more than that, sir.
14 MR. STEPHEN LERCH: Yes. I know.
15 To the south of the Ohio River, they've got one
16 standard notice of claim for their Small claims
17 Courts, for an example. That would be nice.
18 I'd like to address two issues.
19 But first I'd like to tell you that I am a member
20 of the National Association of Retail Collection
21 Attorneys. I am a member of the Indiana Creditors'
22 Bar Association, and a former president; and I am a
23 member of the Allen County Bar Association Collections
24 Committee. I am interested in collections. We
25 practice in all ninety-two counties in this state.

1 So I think I can be a little bit braggadocio and
2 say that I know what goes on in all the courts in this
3 state.
4 Forum shopping. I didn't understand where that
5 was coming from, and I'll be honest with you: I asked
6 someone, and apparently there was some kind of
7 statement some time ago where somebody--large creditor
8 in this county said, "Yes, we file everything in
9 Center Township so it can inconvenience people, they
10 won't show up and we get default judgments."
11 I don't know if that's true or not, but I can tell
12 you that in the thousands of cases my law firm handles
13 every year and file in Marion County, we do not forum
14 shop, and we don't want to forum shop.
15 Because the Fair Debt Collection Practices Act and
16 the FTC and the FCC and the Seventh Circuit decisions
17 make it so difficult for us to communicate with
18 consumers, debtors, defendants--whatever you want to
19 call them--we end up filing a lot more suits than we
20 would like to. Our clients don't like advancing court
21 costs that they may or may not recover. But we have
22 to, because that is the way that we can hopefully meet
23 and talk with the consumer. We want to meet with
24 them; we want to discuss things with them; we do not
25 want to make it inconvenient to them.

1 Now maybe there are collection attorneys that do
2 that, but I would strongly tell you that I don't think
3 they are operating very wisely. Anything that is done
4 has to take into account the requirements of the Fair
5 Debt Collection Practices Act and Trial Rule 75.
6 I think you have to take into account the
7 increased workloads that may occur.
8 I would also like to point out, we talk about
9 driving distance. Other counties, there's an
10 inconvenience of distance. In Allen County there is
11 one Small Claims Court. And I can't tell you how many
12 times people complained about having to drive to
13 downtown Fort Wayne. And they do it. In Lake County
14 you have Crown Point, you have East Chicago, you have
15 Hammond, and I don't know how many other courts that
16 people drive from that can be filed in anyway, and
17 that is a Superior Court system. So there is
18 inconvenience in just the very nature of Trial Rule 75
19 venue requirements and the FDCPA.
20 I would also point out that there are two strikes
21 that a defendant has:
22 In the Notice of Claim that is filed in Marion
23 County Small Claims Court, they tell the person, "If
24 you don't want to appear in this court, just drop us a
25 letter and it will get moved." Secondly, "If you

1 don't like the decision you can de novo appeal to the
2 Superior Court."
3 So I just don't think there's forum shopping. I
4 don't understand the need for forum shopping. And I
5 can't imagine my staff sitting down and going, "Well,
6 let's see, this debtor lives in Lawrence, and that is
7 opposite Decatur; let's bring 'em down there so we can
8 get an automatic default judgment." I just can't see
9 it happening.
10 The other issue implicit in what I am reading in
11 the papers is, somehow impropriety or bias on the part
12 of the court staffs and judges. And I'm sorry, but
13 that's what I'm reading.
14 We practice in every single township of this
15 county. And I can assure you that I have never seen
16 impropriety or bias except if it goes the other way.
17 There was a statement by a gentleman in the Fort
18 Wayne paper, came out of Indianapolis, where he had a
19 problem in 2007 and nothing happened. Well, I know
20 for a fact that if that gentleman had gone into any
21 court in this township and said, "Hey! This judgment
22 shouldn't be here; I got a problem with it," the staff
23 would have shoved the paper in front of him, had him
24 fill it out, made the copy, set the hearing, and sent
25 the notice to our office, saying, "There's a hearing

on the Motion to Set Aside Default Judgment."

Now I said that to another attorney before we met here today, and they said, "Well, there's a couple of them that would have automatically granted the motion to vacate the default judgment."

So these staffs--they work hard, they are not biased, they are not partial; they make it clear, from everything I've seen, that the debtor has certain--the defendant has certain rights, and if they want to see the judge, they tell them they can see the judge. I tell them they can see the judge; attorneys of the Indiana Creditors Bar Association tell them they can see the judge if they want to see the judge.

The judges--

JUDGE JOHN BAKER: Can I ask you a question?

MR. STEPHEN LERCH: Yes, sir.

JUDGE JOHN BAKER: It's probably hard to imagine, but we all did something before we do what we now do, and Judge Barteau and both were Small Claims judges, so we have--this is not our first rodeo; I think it is fair to say that.

MR. STEPHEN LERCH: Is that why you got selected?

JUDGE JOHN BAKER: I don't know.

1 MR. STEPHEN LERCH: Is that how you had
2 the long or short toothpick? Is that it?
3 JUDGE JOHN BAKER: You said something
4 about, that if you asked you could see the judge. Why
5 would you ask? I mean, with all due respect, if
6 you're summonsed to court, why would you ask? I mean,
7 wouldn't the judge be in charge of the proceedings?
8 MR. STEPHEN LERCH: The judge is in
9 charge of the proceedings.
10 JUDGE JOHN BAKER: okay.
11 MR. STEPHEN LERCH: But there are-- I
12 don't know if the number is correct, but there are
13 seventy thousand cases that were filed in the Small
14 Claims Courts in this county.
15 JUDGE JOHN BAKER: So your position is
16 that there's too many cases for the judge to handle
17 it?
18 MR. STEPHEN LERCH: Well, my position
19 is, as it is in so many other counties--most other
20 counties; the majority of counties--is that what is
21 wrong with me meeting with the defendant in advance
22 and saying--
23 JUDGE JOHN BAKER: I didn't mean to
24 suggest that that is wrong. But--and it may well have
25 changed, but when I was a Small Claims judge, my

recollection is, you're told that you're--that there's been a lawsuit filed against you, and that there's a set amount, and you're supposed to have any supporting documents attached, and then you're given a hearing date. Is that correct? Are we still doing it that way?

MR. STEPHEN LERCH: Call it an initial hearing or status date. That's pretty much what it is, yes.

JUDGE JOHN BAKER: So we don't-- That's a new proceeding since we did it-- Doesn't go right to trial.

MR. STEPHEN LERCH: I think it goes with, "Let's see if we can get these cases resolved without the necessity of bringing in the jury and the Court, and the vast, vast, vast majority of the cases--

JUDGE JOHN BAKER: Well, sure.

MR. STEPHEN LERCH: --do get resolved that way.

JUDGE JOHN BAKER: Right. As well they should be.

I just wanted to make sure I understood how it's done.

MR. STEPHEN LERCH: Okay. Right.

I also want to make out-- I was a little upset, not personally, but I think if I had been one of these judges in the Small Claims Court and read between the lines, they're kind of giving some kind of short shrift to their ability to control their courts and their ability to make sure that everyone has their day in court, in whatever way, shape, or form. And I know that these staffs bend over backwards to make sure that happens, that it is fair, and that the judges make sure that it it fair.

That's pretty much it. Thank you.

JUDGE JOHN BAKER: Thank you.

The next person who's indicated that they wished to make a statement is Jerri Coverstone.

Jerri?

MS JERRI COVERSTONE: Jerri Coverstone. J-E-R-R-I Coverstone, C-O-V-E-R-S-T-O-N-E.

I'm not going to burden the court with the--you know, the intricacies of the case.

But I paid my $81 fee, file a lawsuit, child support. I tell the judge--and her name is Miss Scott--that I am transgender. She rolls her eyes, tells me to hold on. She takes the defendant's information and lets them leave.

I have a computer, with video evidence to present

my side of the case. Why even bother to sue these people? And she says, "It's too late; they're already gone." She'd made up her mind like that. [snaps fingers].

I've got the cause number, the information here, and you can open up the folder and see how much of my evidence was presented into that case, and how much of the defendant's was. There is discrimination going on; okay?

I left that courtroom feeling like the laws in this state only matters if you're rich, heterosexual, or Christian. And I'm sick of turning on the TV and hearing how horrible gay people are, and how we're not allowed to get married.

I had to go to the hospital two weeks ago, and because of this fear that I have of the lawsuit, I'm even scared of my own doctor. I can't even trust him.

JUDGE JOHN BAKER: Jerri, can I ask you a question?

MS JERRI COVERSTONE: Yeah.

JUDGE JOHN BAKER: Were you informed that you had the right to appeal your case?

MS JERRI COVERSTONE: Yes.

And my mother fell and broke her neck. She's at a home right now. And I won't go into it, but I would

like to make a comment: Because of the laws of this state, we can't even see the doctor. So that's just something I'd like to say.

I had to take care of my mother. I kind of felt like, to be honest with you, the case, I might have had a slim chance of winning anyway. But the truth is, I should have been able to present my evidence; I shouldn't have to look at a judge and have her go, "Oh, God. I'm dealing with one of these people."

I got a high IQ. I'm a computer repair tech. I design airplanes. Okay? I didn't like going in there and being treated like a six-year-old child just because I was born different than everybody else.

And that's really what I've got to say. I would love for you to go over this. I brought the information with the cause number. And I would like my $81 repaid.

JUDGE JOHN BAKER: I can't take care of the $81, but if you would give the documents to Mr. Nowacki, he'll see that we get it. Thank you.

MS JERRI COVERSTONE: Wonderful. Thank you. You guys have a good evening. And like I said, I'd keep it short and sweet. Thank you for your time.

JUDGE JOHN BAKER: Ralph Gerdes?

MR. RALPH GERDES: Ralph Gerdes,

1 G-E-R-D-E-S.
2 I live downtown, in Center Township.
3 The three points I want to discuss are change of
4 venue, trial dates, and appeal rights.
5 Somebody filed a claim against me; they used the
6 standard form. Within there, within the fine print
7 there was some language about change of venue, I can
8 request that within ten days.
9 Frankly, I missed it, missed my opportunity to
10 change the venue to my own township. And I think that
11 maybe it ought to be highlighted a little better, bold
12 print or something, or--you know, something a little
13 larger, you know, something so that people understand
14 that they can change venue.
15 Trial date. When they sent the claim notice to me
16 the lawyers put a nice cover letter on, saying, "Hey,
17 you owe us this money. We've got a trial date set for
18 this date. You can pay us now, or we can go to
19 trial."
20 And I had some questions about the claim and they
21 wouldn't give me any answers, so I decided I wanted to
22 go to trial and I'll get the answers to my questions.
23 So I showed up on the trial date-- And the
24 summons said there was going to be an appearance and a
25 hearing before the judge. There was no appearance or

1 hearing before the judge. Basically, the lawyer came
2 into the courtroom called my name out and called me
3 off to the side and said, "Well, you can pay me now,
4 or we can set a trial date in the future."
5 Now I had to take time off from work just to get
6 this meeting with the lawyer that I was already in
7 dispute with. And he couldn't answer my questions
8 then.
9 You know, my billing rate is higher--is actually
10 higher than his. I know he's got an opportunity to
11 recover his costs, but I don't. And I would have-- If
12 I'd known this was going to be a meeting with the
13 attorney, I would have blown it off. Because I
14 thought I was going to appear before the judge, but it
15 didn't happen.
16 The last thing is the appeal rights. In my ruling
17 from the judge, there was no statement on appeal
18 rights. I did call up the staff; he said, "Yeah, you
19 have the right to appeal; there's a fee; you know, and
20 you got like sixty days to submit it." So I told him,
21 "I appeal."
22 Well, first of all I had to ask him if I could do
23 it, and he said, "Yeah."
24 Secondly, I didn't know where the appeal was going
25 at that point. I was just told it was Superior Court.

Well, I know there's a lot of courts, courtrooms within that system. It wasn't until the attorney started filing his paperwork that I knew where it was going to be, in which court.

So those are the three points that I want to make.

JUDGE JOHN BAKER: Thank you, sir.

Doug Stephens?

JUDGE DOUG STEPHENS: My name is Doug Stephens. S-T-E-P-H-E-N-S.

I'm one of the Small Claims judges here in Marion County, in Pike Township.

And I think a lot of you are here this evening, and they are here this evening as a result of an article that was in the Wall Street Journal. And there were a lot of things in that article that were not factually correct, and there were a lot of things that were factually correct. Statements made by people were made, they were made but taken out of context.

But, as a result of that article, we, as the judges in Small Claims Court, got together and started discussing some of the issues that you folks are raising. So a lot of the issues that have been raised, we have for years talked about. And some of them we've tried to deal with on our own.

We have met with Judge Barteau and Judge Baker who sent them--Rosenberg, I think, and gave them kind an update on where we are.

I think all of us are rather mindful of some of the concerns that some of you have, but the one thing that we really struggled--or what we as judges are allowed to do.

We can't be advocates for either side. There's a fine line to be drawn between where I try and gently assist someone or tell them what to do and where I start becoming their advocate.

We have a couple of new cases that are coming down now that are suggesting we need to start, in certain instances, whether you know that you have the right or not, we're going to tell you that you have that right and exercise that right for you. It puts us--

The article in the Wall Street Journal started talking about things, and the point phrase they used, "Unsupervised settlement conferences." I'm not sure where this term came from, what term of art, if it exists somewhere else, in a different state, but the suggestion was, we as judges should supervise the discussions for settlement that go on.

We, as judges in Small Claims Court, have but one rule of evidence that is provided to us by the Supreme

1 Court, and that is, we are not to entertain evidence
2 regarding settlement negotiations. So the one thing
3 this article talked about, that they thought we were
4 just absolutely awful--and we're prohibited from
5 actually doing--we can't sit and arbitrate the dispute
6 and then hear the case after the arbitration doesn't
7 happen.
8 So it's a difficult job we have in trying to be
9 fair to everyone we can and at the same time to know
10 that we sit there every day and there are things you
11 may be able to do--you know, we can try to, you can
12 get the Notice of Claim, like the gentleman indicated,
13 that told them a lot of things that he could do.
14 There are time limitations that are imposed, and if
15 you don't meet the time limitations you may waive the
16 right.
17 But, as one judge told me, who's no longer a Small
18 Claims judge, he said, "The wonderful thing about
19 Small Claims Court is, there's nothing Wite-Out can't
20 fix." And what he was talking about was what
21 everyone, no matter what the result, has the right to
22 appeal our decision. It's a complete do-over: If you
23 felt like you were completely and utterly treated
24 unfairly or that you didn't get your evidence heard,
25 you have a right to appeal our decision. And it's a

very cheap appeal. I would be looking around and trying to see if anybody does appellate work or that recognizes doing appellate work, and--you're not getting over to the Statehouse without the payment of thousands of dollars to be able to have your case appealed.

Marion County is unique; it gives you the opportunity to be heard on an appeal for the payment of a hundred and thirty-seven dollars. So it's the cheapest appeal there is.

I--when I have very contested cases, I'll try to make sure folks get out every last breath of what they want. Because they may not, frequently-- One man may not want an appeal, but most folks truly just want their day in court; they want to be heard; they want an impartial person hearing what--you know, their case, making a decision based on the law of the state. I think all nine of us do that.

Now, to get into this discussion about what goes on with, you know, with--if I should talk with the attorney, whether I should talk with-- My staff tells folks that walk in, "Are you in the right place? Okay, you've been sued by someone that may or may not be an attorney, and if there's not an attorney, go have a seat until the cases are called up. If there's an

attorney, do you want to talk with the attorney?" They're given the options. "If you don't want to talk with the attorney, fine, we'll let the judge know that and the case will be called up; we'll let the judge know."

JUDGE JOHN BAKER: And just for the purposes of discussion, if you have two people that are unrepresented, a plaintiff that's filed a claim for, let's say seven hundred and eighty dollars, saying that somebody owes them that because they didn't--they broke their lawnmower. That'd be a pretty nice lawnmower.

JUDGE DOUG STEPHENS: They broke their riding mower.

JUDGE JOHN BAKER: Okay.

So I assumed that the notice is sent out and the plaintiff will be there and the defendant would be there; right?

JUDGE DOUG STEPHENS: Correct.

JUDGE JOHN BAKER: And their case is heard.

JUDGE DOUG STEPHENS: Correct.

What we-- I don't know about other Small Claims judges, but I think we've had some discussions on this.

1 There's a case that came out a couple of years ago
2 that says that, unless the Notice of Claim is set for
3 trial, the plaintiff can't take a default if the
4 defendant doesn't show up. So some of the courts
5 operate them on an admit/deny basis. If both parties
6 show up and they want to try it that day, we'll hear
7 it.
8 JUDGE JOHN BAKER: Well, I mean-- I'm
9 sorry. My recollection of the Small Claims rule is
10 that there is no responsive pleadings solicited; is
11 that correct still?
12 JUDGE DOUG STEPHENS: Correct.
13 JUDGE JOHN BAKER: And so the plaintiff
14 is there and the defendant is there. So-- But the
15 practice is what you're sharing with me, and what I
16 think I heard from counsel is that the fact--the first
17 hearing is to just decide whether or not they're going
18 to challenge that.
19 JUDGE DOUG STEPHENS: In the last three
20 years I've gone to that practice as a result of the
21 decision in the Court of Appeals that says, you know,
22 that they want to be able to take a default if it's
23 going to have to be set for trial. So they are set
24 for trial, and they come in and there's some--they
25 want to dispute it, generally we will set it for a

contested trial date.

JUDGE JOHN BAKER: I am not getting an answer. That's because I am not doing my question well.

JUDGE DOUG STEPHENS: I'm not trying to evade it.

JUDGE BAKER: No, I know you're not. The guy that wrecked my riding lawnmower, he doesn't show but I'm there. Do I get a default judgment?

JUDGE STEPHENS: Yes, you do.

JUDGE JOHN BAKER: Okay.

JUDGE DOUG STEPHENS: Because it was technically set for trial.

JUDGE JOHN BAKER: Right. And I went-- I didn't go, but he showed up. Is a judgment entered against me?

JUDGE DOUG STEPHENS: Well, it wouldn't be-- If there is only a Notice of Claim against the defendant, one of two things would happen. Either the case would be dismissed--without prejudice, in my court, because it could have been something that-- You know, if we have a telephone number, sometimes we'll make an effort to try and contact the person who's supposed to supply us with a telephone number. We

also ask folks to call us the day before, to make sure that they've got good service and that there's really going to be a hearing.

If the other party doesn't show up, usually we'll try and call them. If we don't get an answer, generally it's dismissed without prejudice, which means that the plaintiff, once he gets the notice in the mail that he missed his court date, has an opportunity to come back in and ask the court to reinstate the case for good cause.

JUDGE JOHN BAKER: Thank you. I appreciate it.

I probably tricked you, because I think the check mark was for somebody else. But we appreciate the fact that you--

Senator Waltz? You did check.

SEN. BRENT WALTZ: I did.

JUDGE JOHN BAKER: Good to see you again.

SEN. BRENT WALTZ: Well, thank you, your Honor.

Yesterday Chief Justice Randall Shepard was honored by the Indiana State Senate for his twenty-five years as the Chief Justice of the Indiana Supreme Court.

1 And with all the speeches that you would expect
2 the politicians would say at that opportunity, the
3 lasting legacy that was made on all of us was that
4 Chief Justice Shepard has had a major impact on the
5 openness of the judicial system in Indiana. And
6 that's really an amazing feat. The stories that have
7 been told by Senators that are far more experienced--
8 which is a polite way of saying that they may be older
9 than me--said that prior Chief Justices had had a much
10 more closed viewpoint when it came to the courts, and
11 that Randall Shepard opened that process, made it far
12 more transparent, and made access to the courts really
13 the essential part of his tenure.
14 And I consider that the Small Claims Court is
15 really a natural extension of that. And I would
16 applaud the long-time supporting jobs you do.
17 In Marion County there's about seventy thousand
18 cases a year. That is a huge number of cases that are
19 going through the court system that otherwise would
20 find their way into the Superior Courts, which would
21 be, I think, a tremendous additional expense in taxes.
22 So the Small Claims Court judges are really the first
23 line of defense, if you will, to mediate disputes, and
24 really the court system that most people in numbers
25 actually get access to. They generate about one point

1 five million dollars a year in fees to the State, so
2 we can certainly appreciate that--I'm on the Senate
3 Appropriations Committee--and in this difficult
4 economic environment we certainly appreciate their
5 contribution to the courts.
6 I can say that, in the eight years that I have
7 served in the Senate, we've received a lot of
8 complaints about all levels of government--federal,
9 state, and local--but I am certainly not the one who
10 who agres with that when it comes to the Small Claims
11 Court system in Indiana. I think that might be
12 significant.
13 Now, having said that, I think it's really very
14 good and appropriate that we look at ways to try to
15 improve the quality of the judicial experience, and
16 certainly, asking these types of questions. So I
17 certainly applaud the efforts that you are undertaking
18 in doing that. And if there's anything that we can do
19 on the Legislative level to assist, our door is
20 certainly open.
21 MS BEVERLY HEID: Where they had a
22 check mark--
23 I wanted to-- No-one told me to make a check
24 mark--
25 JUDGE JOHN BAKER: Would you tell me

your name, ma'am?

MS BEVERLY HEID: Beverly Heid. H-E-I-D.

JUDGE JOHN BAKER: Beverly, would you stand and make your statement?

MS BEVERLY HEID: Okay.

My name's Beverly Heid; it's spelled H-E-I-D.

And I think my major complaint is that, I am not an attorney, but I sure got a fistful of legal jargon.

And I have a little red Volkswagen, parked outside, and it happened to have its oil pan destroyed by the City's road, that was being--

That's another story. Okay.

So I was to file a tort claim. I did that. It had to be certified mail. I didn't have the experience in the right place, and it was dismissed, et cetera, et cetera.

So their first trick out of the box was to delay any comment. But I had been called, the day after they got my claim, from the investigator. He said the roadbed had failed, that he'd put it in the road--an order, they would--and they closed the road and they repaired it. Okay.

So I kept trying to send the e-mails, "What's the delay?" And they'd say, "an investigator". Well, it

turns out that the turnover to the police part of the City and Corporate Counsel, and once the Mayor said the Department of Public Works meant nothing. And then they called me and they harassed me about, why in the world I would ever file, why in the world would I think somebody would want to pay--it was five hundred dollars. Okay.

So finally this one man called and said, "Well, I'm going to talk to my employee, because he didn't talk nice to you. And maybe you'd better file in the Small Claims Courts, where you will get a fair hearing."

So I came to Perry Township--that's where I live--and I went in there, and the people were very nice, and there was a big sign, you can follow it on the internet. And they said, "But we'll warn you: The City will drag it out." And I didn't know what "drag it out" meant.

However, what happened was that they filed for a jury trial in downtown Marion Superior Courts. And I have all these envelopes, because all of these are legal things that I was always getting--never by certified mail, mind you--and then once in a while you get a little baby postcard like this, and they said that "Pursuant to Marion Superior Court Local Rule LL

49" dash blah blah blah blah--"this case is ordered re-pled in its entirety, commencing with the Claimant below filing a new Complaint in compliance with Indiana Rules of Trial Procedures." "New Complaint, you have twenty days" dah-dah, dah, dah.

So I called downtown at this number, and I said, "Can you just forget it?" "Oh, no! You cannot forget it!"

And I said, "Well, I'm not interested. I'm 73; I've had leg surgery. I don't want to do this."

And they said, "Well, you come downtown-- Where's your attorney?" They always asked me where's my attorney.

And I said, "For five hundred dollars, I don't have an attorney."

Okay, so I go downtown, and I have to look for a-- And they said I could not talk to the judge. And I never did see this judge. Because all of the papers were filed by the City, and they said they didn't have to pay a fee; I did, I had to pay, but they didn't because they were a city thing.

And so I went back to the fellow, and I said, "Do I get my money back?" And they said, "No, no way."

So at that point I owed--you know, I was out five hundred and eighty dollars.

So I can't talk to the judge, I can't write him a letter, blah, blah, blah, blah. So I go downtown, and I go in there and this lady first says, "Where's your attorney?" I go, "I don't have one." Okay. So she slaps this pad of paper on the desk and says, "Will you fill this out?"

There was a place there for the attorney to sign. So then she goes, "She doesn't have an attorney," so then she writes some little thing there, and I just said, "You know, I don't want to be harassed any more. Please drop this," dah-dah, dah, dah, dah.

And then I get a letter, and it says, "She did not follow the rules of" blah, blah, blah, blah, bop, bop, bop, "and therefore we're going to have to have a "hearing-- Now mind you, the City is paying two attorneys to fight me on this. And so we're going to have a hearing in February. This has my court standing in April. And so I go, "I "don't-- You know, I asked the judge to dismiss it on their legal paper.

So, finally, the last letter I got, I just wrote that I won't be at any hearing, to dismiss it, because I didn't know if they were going to fine me for contempt of court or whatever.

But anyway, I think I got out of it, but I think

the main thing is, generally you think in a Small Claims Court an individual could come in and have a chance. I know that I didn't ever have chance to see this judge, and I don't know why he would have a jury trial on such a picayune little thing. And I feel that they did everything they could to scare me.

And I think maybe when you're--when I saw you were having these hearings, I thought if you were trying to see the little guy's viewpoint and how, you know, if you have a big attorney or something like that, I guess so, but they finally scared me sufficiently that I just--you know, I gave up.

As somebody said, "Well, if there's someone tonight who wants money," I don't want the money; I just want you to help somebody else if they have a problem. I mean, I didn't know "dragging out" was going to be that kind of a thing.

JUDGE JOHN BAKER: Thank you very much.

MS BEVERLY HEID: Thank you.

JUDGE JOHN BAKER: Since we have had some who've indicated that they signed the paper, thinking that they were going to be able to make a statement, may I ask, is there anybody else in the audience that would like to make a statement, who hasn't indicated?

I am going to-- We have three people so far--
Go ahead.

MR. MICHAEL MASSEY: Michael Massey.

JUDGE JOHN BAKER: Mr. Massey?

Would you state your name and spell your last name, please?

MR. MICHAEL MASSEY: Michael Massey; M-A-S-S-E-Y.

Okay. this has been a problem, and I'm not going to bore you with the details, but I'm going to have to tell you just a little.

It involved three facts: The timing elements, the process, and then a big dose of hypocrisy.

First of all, the basic elements.

I had an accountant that I hired when it was 1099s, to do all my taxes. I didn't need his services after 2007, because I switched jobs and went to a W-2 job. Told him, "We're done. It's fine; you did great. Take it easy." Owed him eight hundred dollars, and paid him off.

But the most amazing, he kept billing me for things. I didn't notice.

Get a bill a year and a half later, owe him a hundred and fifty dollars. I called the office, talked to Colleen. She says, "We'll take care of it."

Get another bill at 2010, after I've already been doing my taxes myself for two years, five hundred dollars for tax consultation. Well, this is just fraud. I didn't call him about it; he said it was for property tax consultation. My property taxes went down. Why would I want to go get an accountant when they're going down? So I blow it off; I just called her, tell him just to let it go.

Out of the blue, a collection attorney calls me, my first time ever dealing with that type of lawyer. I talk to the guy, tell him the story. He says, "You know what? You're the fourth person to tell me the same thing." He says, "I'm going to drop this account." I said, "Great."

Six month pass; I get another letter, from another collection attorney. But this guy turns out with-- I guess he bought this debt because the guy sold his business. So I started dealing with him. He tells me I need to pay eight hundred seventy-one dollars, what I owe plus some basic fees, like sixty dollars, or we're going to sue me. I said, "You know, there's nothing to sue me for. You don't have anything; I did not hire his services." "Oh, yes, I've got papers; we have records."

"First of all, if you have records, they're either

fraud or forged. Period." I went ahead. He served me with the papers.

Now here's where we get to the process part.

I was incorporated. I owned a business of my own. At the time I did mortgages. Now I do insurance, but that's different.

I have made a lot of money doing this, I was very good. I sought this accountant's advice, not to dodge that, and I'll pay my fair share; I'm not one to dodge out. I just wanted to make sure it was all legal.

I tell this guy that I don't owe the money, I didn't--I showed him my Turbo-Tax receipts from '09 and 2010. He said he billed me in May of 2010 for some property tax services. So I go through all this, tell the lawyer. He won't have it. He sues me in Superior Court 6, here in Marion County.

Now here's the process part: Because I have a sole corporation, I have to go hire an attorney to fight an eight hundred and seventy dollar fee.

So I called the judge's office, talked to a young man down there--very helpful--Brendon. He didn't go overboard, he said, "I can't really talk about this, but here's what you might want to do."

So I file a motion with the court, send it to the lawyer, that I want to come in and represent myself,

1 and he strikes it. Now here's where you get to the
2 timing issue.
3 In between the time that he set my default hearing
4 and the time that I got the notice was eight days.
5 The Sheriff took eight days, I guess, to catch up on
6 his deliveries, so I was eight days out of the pocket.
7 Now, I'm a college graduate; I went to IU, I met a
8 lot of good people. Some of my best friends are
9 attorneys here in Indianapolis. One of them is
10 Richard Kieffer; well-know, I've known him for
11 thirty-eight years. I called Dick Kieffer. He gives
12 me the run-down: "Here's what you're up against."
13 Now Dick Kieffer's expensive, like five hundred bucks
14 an hour expensive. But I'd of got like the family
15 discount, but he says, "You're still spending
16 twenty-five hundred dollars to try to resolve this,
17 and we don't even know if we're going to have to take
18 a deposition from this crook. And there's another
19 three hours." He said, "I think that we ought to try
20 to do something with the lawyer."
21 Wouldn't budge.
22 I get a default judgment against me. Couldn't go
23 to court because I had to be represented by an
24 attorney.
25 Now here comes the hypocrisy. I just had a

default, just got it yesterday. That I'm to show up in court, April 24th. But now that they want to garnishee my wages, I don't need a lawyer, so "We can stick you up and do all this to you at the end, but you"--but I couldn't go into-- If I had just been able to see the judge for ten minutes, sit down and say, "Here it is: I didn't order this. If he produces something, it's forged. Here's my-- I did my taxes for '09 and oh 10. I paid this bill; here's the balance; it was a zero in September of '08, and we were gone. And he's got eight hundred dollars of that."

There is no way to success. If you call the judge, you can't talk to the judge. Brendon's not probably saying much because he could be taking sides in this. No-one tells you what to do.

You know, I called three different lawyers--Dick Kieffer, Jerry Riggs, and Mike Hebenstreit; they're all friends of mine; I've know them a long time. Hebenstreit does basically--he does a lot of stuff in the Superior Court system. All of them say the same thing: Mr. Steele, this should be time for legislation. If it's a sole corporation, owned by one person with no officers, he should be able to represent himself and his corporation in court.

JUDGE JOHN BAKER: One of the proposals that we were asked to look at is rules changes, and that may well be one.

MR. MICHAEL MASSEY: And I think they ought to give them a little more time. And I know the Marion County Sheriff's deputies--I know they're busy; I mean, I know that. But when I'm seven days out of pocket from the get-go on thirty days, and I can get ahold of Dick Kieffer, and he's always into trial, and trying to talk to him get an hour of his time, and other people, thirty days is not adequate.

JUDGE JOHN BAKER: Thank you, Mike. All righty. Rick Madden.

MR. RICK MADDEN: Rick Madden. R-I-C-K M-A-D-D-E-N.

Your Honor, the issue I'm having today is, I was--after 9/11 I was activated to military duty. During that time I served eight times from 2001 to 2008. During that time I was sued six times while away on military duty. I'm a single man, so most of my affairs were taken care of by my father, and they were set up on advance payments, so it was automatic drafting. Several of those had issues, and I was not able to take care of them, and I was unaware of them while I was gone. Went through the court, letters and

1 sued and returned home, and then back to work before I
2 ever found out they were taking drafts out of my--
3 automatic drafts for property, was the only way I knew
4 that there was lawsuits filed against me.
5 Three of those, I filed appeals, and the judge
6 denied those appeals, in direct violation of the law.
7 JUDGE JOHN BAKER: We used to call that
8 the Soldiers and Sailors Relief Act, in red ink. But
9 it is the case that, while on active duty, it's to
10 protect you from certain--
11 MR. RICK MADDEN: Correct.
12 Now I filed that appeal, and on three occasions
13 the judges reaffirmed the court decision and denied
14 the appeal, in Small Claims Court.
15 JUDGE JOHN BAKER: Here in Marion
16 County?
17 MR. RICK MADDEN: Here in Marion
18 County.
19 I still have three cases pending. One has been,
20 taken five years, and the attorney has refiled it five
21 separate times against me, even after he loses.
22 Many of the judges don't know that's a criminal
23 offense--it's a misdemeanor, a two thousand dollar
24 fine and a year in jail, and they are still doing it.
25 Not only to myself, but I've heard of many other

soldiers that it's happening to.

JUDGE JOHN BAKER: Have you contacted your JAG officer?

MR. RICK MADDEN: I have.

JUDGE JOHN BAKER: They have mechanisms to investigate, and I recommend that you do that. Because we appreciate your military service, and Congress has provided that you be free from service of process during that period of time. So, if that's the case, then it needs to be recognized.

MR. RICK MADDEN: Your Honor, I think what I'm running into, many of the judges don't even know that that exists.

JUDGE BETTY BARTEAU: I've had the experience, when I was a Superior Court trial judge, that the military contacted me on cases when I had a military person in my court for some reason, so if you make a contact--

JUDGE JOHN BAKER: With the JAG--

JUDGE BETTY BARTEAU: --with JAG. They-- In the past, at least, they've always contacted the judge themselves.

MR. RICK MADDEN: 'Thats what they say, that they can't intervene in the civilian court, because they're not licensed to practice in civilian

court.

JUDGE JOHN BAKER: They'll find somebody that can.

JUDGE BETTY BARTEAU: I know they do.

JUDGE BAKER: Your commander will find somebody that can.

JUDGE BETTY BARTEAU: You know that they do?

JUDGE JOHN BAKER: Yes.

JUDGE BETTY BARTEAU: I've had contacts on that subject.

MR. RICK MADDEN: The other aspect of it, when I started trying to work with creditors, trying to get to the issues, several times they've recognized that I was calling from overseas and simply hang up. Except one time I was told, "Don't worry about anything; I understand you're overseas, and we will move the case," and went through with it anyway.

And so I'd just like to draw attention to the fact there are a lot of soldiers and sailors coming back right now, and if the judges-- I wasn't even able to find out who brought it, in regards to-- I contacted Senator Coates and try and find out who's responsible for prosecuting these people when they violate, and no-one could even tell me that.

JUDGE JOHN BAKER: Okay. Thank you. Appreciate it.

Chris Bottorff.

Chris, would you state your name and spell your last name?

MR. CHRISTOPHER BOTTORFF: Christopher Bottorff. B-O-T-T-O-R-F-F.

All right, first I'd like to thank your Honor for allowing everyone to meet and give our input, and hopefully some changes for the better will come out of this.

I am actually a landlord, and I operate a collection agency.

And in the articles I've read, one of the big issues seems to be the venue situation. As a landlord, it's been, maybe over a decade ago, the same issue arose with venue because it was perceived that landlords were filing cases in Decatur Township or Pike Township--you know, far away from where their properties are located, which made it impossible for some of the tenants to appear in court.

As a result of that, there was a rule change made that requires propertyowners to file in the township where the property is located.

The venue for Notice of Claims can be any township

in Marion County. The issue there-- I don't think that there are lawyers that are filing cases in certain townships to be inconveniencing people so they can't show up. I think the issue is more of, is this court going to be able to handle the number of cases that are being filed? Do they have adequate facilities? Some of the courts are cramped in space and just can't handle the volume that some of these law firms are filing.

And the other issue that has come up as far as defendants' rights, I do have one suggestion that might help alleviate some confusion.

It was mentioned that there were brochures that were being handed out to the defendants. I would make the suggestion that maybe there be a sign posted at the counter and in any consultation rooms, something to the effect that, "As a defendant you have the right to see the judge," and there may be some other things that you want to add to that.

And, you know, how much does an eight-by-ten sheet of paper cost, with those rights on it, tacked to the wall where the defendant can see it in the consultation area?

And there are-- How the system normally works is, we appear in court; we usually check everybody in;

1 they give us an opportunity to speak with the
2 defendant to see if we can reach some kind of a
3 resolution. And then the file is usually turned over
4 to the staff, which puts it in front of the judge, who
5 will then ask the defendant if they agree to this, and
6 you go on.
7 Now-- And it helps save the court a tremendous
8 amount of time, because the only issue might be, like
9 on a garnishment, is, "I can't afford forty-five
10 percent of my paycheck," and we make it fifty dollars
11 a week instead.
12 And those kind of issues, I don't think the judge
13 really would need to be supervising that conversation.
14 As far as any impropriety or a perceived
15 unfairness by the judges, I've been to every Small
16 Claims Court in Marion County, and I have--I have been
17 at hearings that I think are going to take ten
18 minutes, and I end up being there for three hours just
19 because the judge is taking extra time to explain to
20 the defendant what rights they have. As far as
21 appeal, as far as, you know, a right if they want to
22 get their own attorney. And in particular I have been
23 in Judge Smith's court until six o'clock at night a
24 few times because she was taking that extra time.
25 If the Court--or if there was a rule to change

1 the venue for Notice of Claim filings, I would be very
2 concerned about placing certain courts under a
3 tremendous burden on the caseload. Because, quite
4 frankly, it appears that there are certain courts that
5 are already overburdened with the amount of work they
6 have.
7 JUDGE BETTY BARTEAU: Mr. Bottorff, you
8 own a collection agency. Do you file most of your
9 cases in any particular court?
10 MR. CHRISTOPHER BOTTORFF: I cannot,
11 because most of my cases are landlord-tenant--
12 JUDGE BETTY BARTEAU: Well, you are
13 talking about landlord-tenant, not collection, debt
14 collection?
15 MR. CHRISTOPHER BOTTORFF: And I
16 require all of my clients to have a judgment, so I'm
17 already bound by whichever court my client had to
18 file--
19 JUDGE BETTY BARTEAU: You don't take
20 the collection until it's passed the judgment stage?
21 MR. CHRISTOPHER BOTTORFF: Yes.
22 JUDGE BETTY BARTEAU: Okay.
23 MR. CHRISTOPHER BOTTORFF: But now,
24 would I go to a certain court if I was doing a
25 different type of collections? I probably would look

1 for one that I don't have to pay for parking at,
2 that's more convenient to my office, that the court's
3 staff isn't completely overburdened.
4 JUDGE BETTY BARTEAU: Okay.
5 JUDGE JOHN BAKER: Can you wrap it up?
6 MR. CHRISTOPHER BOTTORFF: Yes.
7 Judges have also been very lenient with, if the
8 defendant comes in asking for a motion to set aside,
9 it's almost a given--even if they have been past the
10 one-year timeframe, most of the judges will go ahead
11 and see if there is anything to what the defendant has
12 said.
13 Another issue that was mentioned was the attorney,
14 Small Claims Rule 8(c) provision which limits
15 corporations to fifteen hundred dollars without being
16 represented by an attorney. Although he was on the
17 other side of that as a defendant, they require you to
18 have to have an attorney, regardless. So I think that
19 rule needs to be looked at a little harder.
20 It also places a burden on my real estate
21 business. I've had a situation where I decided they
22 only owed like four hundred dollars in rent, so I
23 filed a--for possession, thinking it's going to be
24 less than fifteen hundred dollars; when the defendant
25 moved out and vandalized the house, stole the furnace,

1 air conditioner, water heater, broke out all the
2 windows, and now I was forever barred from asking for
3 more than the fifteen hundred even if I decided to get
4 an attorney at that point.
5 JUDGE JOHN BAKER: Thank you, sir.
6 Greg Bowes.
7 MR. GREG BOWES: I'm going to be quick.
8 My name is Greg Bowes; B-O-W-E-S. I'm an attorney
9 who practices mostly in Marion County, and I don't
10 have much of a Small Claims Court practice, but I do
11 have some experience there, and I wanted to share a
12 couple of ideas.
13 One of the things that, Judge Baker, you've been
14 asking about is that, do you have a trial on your
15 first hearing, or is that a status conference? And
16 I'd like to point out that my experience for the most
17 part has been that most of the courts--and this goes
18 back a while--most of the courts would set the first
19 date as sort of a status admit-or-deny type of a
20 hearing.
21 I know I was fortunate enough one time, with Judge
22 Stephens, where I was bringing a claim on behalf of a
23 plaintiff, and I was pleasantly surprised that the day
24 we showed up for that first date we were allowed to
25 have a trial.

1 And why it's important from the plaintiff's side
2 is that we expected to have a trial because that's
3 what the notice said that the defendant would be
4 facing, and so we prepared for trial, including the
5 preparation of all our evidence and the possibility of
6 subpoenaing witnesses.
7 So if we were to show up to the court with all
8 our preparation done, and possibly dragging witnesses
9 from their jobs, to find out that that was only an
10 admit-or-deny hearing, then I would suggest that's an
11 injustice and it goes against the normal--the whole
12 reason behind having Small Claims Courts, which is to
13 get quick, cheap, and fast justice on that situation.
14 When you look at that admit-or-deny date, or tagt
15 status date from the other standpoint--in that case I
16 was representing a plaintiff--if you were a defendant
17 and you were there because of an institutional filer,
18 some debt collection firm that is bringing twenty or
19 thirty at the same day, they probably already know
20 they are not going to trial twenty times that day.
21 They're grateful to have the status date where the
22 Notice of Claim says "You must appear or you'll be
23 defaulted," and it gives them an opportunity to have
24 this little settlement discussion.
25 But what if there is no opportunity to go to court

1 that day? If the defendant's come in, taken a day off
2 work, tried to settle it, can't work it out, and then
3 the Court says, "No, you're going to have to come back
4 again," and then we have all those issues that we have
5 been talking about, about how far away the court is,
6 if there's forum shopping--or even if they're not
7 forum shopping and they're just far away. And just
8 the idea of having to come to court a second time is
9 pressure on a defendant who might have a good defense,
10 or at least want to present a good defense, would be
11 pressure for him to settle when he'd rather not.
12 So I'd like to--you know, the court to talk about
13 that.
14 JUDGE JOHN BAKER: Seems to me that you
15 are encouraging some degree of reciprocity; is that
16 it?--equilibrium--if the plaintiffs get to do it this
17 way, then the defendants get to do it that way. Is
18 that--
19 MR. GREG BOWES: Absolutely.
20 Well, whatever the rule is, it ought to be like
21 that. If you are giving a little bit of leeway to
22 come back a second time, it should be applied equally
23 among the parties.
24 And I recognize what our colleague from Fort Wayne
25 was talking about. There's nothing wrong with having

1 settlement discussions. That speeds up the process if
2 it works. The problem I've got is, if it's held over
3 the head of one party or another and makes the
4 resolution of the case more costly and more delayed.
5 So I'm hoping that we can fashion some sort of a sense
6 on that, that helps address those concerns.
7 I did also want to talk about the idea of having a
8 de novo appeal, and the right to demand a jury trial.
9 I don't know how many times I've had a client--a
10 potential client call me, saying, "I've got this small
11 problem. You know, it's two thousand dollars, it's
12 eight hundred dollars," and asking for help. And, you
13 know, one of the first discussions is, "Well, if you
14 paid me you'd eat up all the cost of your dispute. So
15 you should be trying to do this without a lawyer if
16 you can."
17 But the next thing I have to tell them is, "But if
18 you file in a Small Claims Court, the defendant can
19 immediately demand a jury trial and bump it into
20 Superior Court, where you'll be over your head if you
21 don't have a lawyer, and therefore it's already too
22 costly."
23 It's almost--it's the effect of saying, "If you
24 bring the claim it's worthless; you're not getting
25 that benefit that Small Claims Courts are supposed to

1 give you, which is quick, easy, cheap justice that is
2 in relation to the size of the dispute.
3 So I'm wondering if that idea of having the
4 defendant so easily be able to demand a jury trial is
5 going against our very policy of why we have Small
6 Claims Courts.
7 The same kind of comment that applies to the idea
8 that if you go to court--and this would apply to both
9 sides--you go to court and you have your Small Claims
10 Court judge make a decision, and then either side can
11 take it on a de novo appeal to Superior Court. It
12 immediately bumps the cost, it triples or quadruples
13 the cost of resolving the dispute. So I think you
14 should take into account how that affects these small
15 problems, these litigants who have small dollar-value
16 disputes, and how we can get them justice without
17 having the cost of getting justice being two, three,
18 or four times the amount in dispute.
19 One last point I wanted to make would be with
20 regard to our gentleman who was a corporation. I
21 don't know what the answer is on that. I just wanted
22 to point out, in the news recently was a woman who
23 sued Honda Motor Company. She had a hybrid car and it
24 wasn't giving the mileage that they had advertised,
25 and she went to court and said--and she opted out of a

1 class action on that.
2 But what was interesting about that is, this woman
3 was--the owner of the car was an attorney who had let
4 her license lapse; she challenges them, finally comes
5 to her and says, "You know, there's a rule here in
6 California that says, if you're in Small Claims Court
7 you cannot have an attorney." So it's an interesting
8 idea about, you know, do we let attorneys be there?
9 Do we keep them out? Do you apply that to a
10 corporation or, you know, or any of those business
11 entities?
12 My initial reaction when I heard that was, "Why
13 would you ever want anyone to be going to a legal
14 dispute and not have the opportunity to get counsel?"
15 But at the same time, it goes into the idea--I'm sure
16 they were thinking balance: "Let's let nobody have
17 attorneys, and then we'll see how it shakes out."
18 But I don't know what the answer is on that, but I
19 just wanted to point out that other states do that
20 other weird thing.
21 Thank you.
22 JUDGE JOHN BAKER: I'm sure that a lot
23 of states do a lot of weird things.
24 Jimmie Crawford.
25 MR. JIMMIE CRAWFORD: Jimmie Crawford,

C-R-A-W-F-O-R-D J-I-M-M-I-E.

And, your Honor, I've got a couple of things that I want to discuss.

One is the time that is given from the time you get your notice--like I received this notice in the mail five days before I have to be at the court. And when I got to the court, which is the Decatur Township court, the attorney for the plaintiff had the local constable delivered a--should have delivered a similar document.

Well, I was in Florida most of the month. So there was nothing delivered to me. And, to make a long story short, after I went to the court with my mail thing, I found the--a thing that somebody might have stuck in the door of my house, in the bushes next to the front door.

So maybe, if they are going to base this on a time basis, that the constable should get a signature that it was delivered. Because I never-- I didn't know anything about this action until five days before my court date. When I go-- And, you know, the first think I do, of course, when I get this was, I go on the internet and print out the rules for the Small Claims Courts. And, you know, there's sixteen or seventeen different things listed in the State rules

for small claims.

So I show up to this--for this action on the 26th of January, with the idea that I'd like to talk to the judge. Well, the only thing I have the opportunity to do is be routed into a room there with the plaintiff's attorney, who tries to force me into paying this judgment, which I don't think is correct anyway, because it's a medical bill where there's an error in the bill.

So anyway, I bring up the fact, because I have already printed out this stuff on Small Claims Court, the rules and everything. I live in Hendricks County. And my treatments, everything I had done that is in question was done at Ortho Indy, in Hendricks County. I have nothing--I have done nothing in Marion County, yet I'm summonsed into the Marion County Small Claims Court in Decatur Township.

And my question to him was basically, "Well, why am I here? Because, you know, I have printed out the rules that clearly states what venue--what's necessary for proper venue, I think is the word for it."

And he says, "Well, I didn't know that there was an Ortho Indy facility in Hendricks County. But that doesn't change anything. Since you appear here to see me, this is the valid venue."

JUDGE JOHN BAKER: Did you talk to the judge that day, sir? I had no chance.

JUDGE JOHN BAKER: Did somebody stop you?

MR. JIMMIE CRAWFORD: Yes. The people at the counter there basically would only let me see Mr. Johnson.

And so I go home, and I write a motion to the Court, advising, you know, the judge--I sent it to the judge. The motion, I get a--basically a judgment order, and in that motion I'd suggested to the judge that the venue was not correct because it's not, according to the laws of the State of Indiana, and then the--that, you know, it should have been filed in Hendricks County.

Well, I get the judgment order back. The judge has never done anything on this; it's been--looks like it's been signed by the attorney, saying that the motion for-- I didn't even to ask for a venue change; I asked for the case to be dismissed since it was filed in the wrong county. And I get this back from the-- The attorney is the one who sent it, not the judge; she's never seen the thing. And it says, "The motion for change of venue is denied because it's untimely."

And the-- You know, I'm very, very upset about this. I drove thirty miles today to come from Hendricks County in here, just to let people know what's going on. But I didn't feel like I was in the United States; I felt maybe I was in a communist country or something, because it appears to me that the judge is the attorney for the plaintiff. Because I have not--I have tried to communicate with the judge, and had no success whatsoever.

JUDGE JOHN BAKER: Thank you very much, Mr. Crawford, for your efforts to make some of these things brought to our attention.

MR. JIMMIE CRAWFORD: Okay. Well, I go to court tomorrow on this.

JUDGE JOHN BAKER: Good luck. I know I'd like to be able to step off the bench, stand right next to you.

JUDGE ROBERT SPEAR: Your Honor, may I point out that the judge in Decatur Township in the last three weeks died, and there's a pro tem sitting in.

JUDGE CLARK: Judge Clark, from Lawrence Township Small Claims Court. I was just pointing out that Myron Hoff [phonetic] was just appointed last week as the judge for Decatur Township,

1 to take over for the deceased, Bill Fisher, who died.
2 When was that? When did he die?
3 MR. JIMMIE CRAWFORD: Last Friday.
4 JUDGE JOHN KITLEY: Okay, there we go.
5 JUDGE JOHN BAKER: I'm going to ask, is
6 there anybody else who thought, by signing this, that
7 they were going to have an opportunity to make a
8 statement and they haven't?
9 Yes, sir.
10 JUDGE JOHN KITLEY: I am John Kitley,
11 K-I-T-L-E-Y, Jr. I am the judge in Franklin Township;
12 I've been there for almost twenty years. And I wanted
13 to address what counsel brought up.
14 It's a balancing act to be fair to the plaintiff
15 and defendant. I want to speak for the defendant
16 here.
17 He believes that, at that first setting, that
18 neither party should be entitled to a continuance.
19 Well, put yourself in the shoes of the defendant. The
20 defendant gets their Notice of Claim; they have ten
21 days to file their motions--not much time. They come
22 in, they're overwhelmed, the other side has an
23 attorney. They don't have an attorney. And they want
24 time to hire an attorney; they want time to prepare
25 their defense.

1 So there is another side to that issue. I mean,
2 you're trying to be fair to the plaintiff and to the
3 defendant. But a defendant that is without an
4 attorney needs to have his or her rights explained to
5 them. I spend fifteen minutes before I--when I take
6 the bench, fifteen minutes going through everybody's
7 rights, at every session, morning and afternoon. I
8 explain the right to subpoena witnesses. I explain
9 the right to conduct limited discovery, things that
10 lawyers would know. So if you don't grant that
11 defendant a continuance at that first trial setting,
12 well then you're jeopardizing the defendant's rights.
13 So you can't push a defendant to go to trial and not
14 grant that continuance at that first trial setting if
15 they're not prepared.
16 So you can't have a rule that covers everything.
17 You have to exercise discretion: Are they ready to
18 go? Do they know what their rights are? Do they need
19 to subpoena witnesses? Do they have their evidence?
20 And then exercise--that's what we do, exercise our
21 judgment as to whether or not they should be entitled
22 to a continuance so they can hire an attorney, so they
23 can subpoena witnesses.
24 JUDGE JOHN BAKER: If the plaintiff
25 shows up with their documents and their pictures and

the broken lawnmower, and the defendant's there and nobody asks for a continuance, you're prepared then, under your procedures, to go ahead and dispose of that case.

JUDGE JOHN KITLEY: If everybody is ready to go and they feel like they are prepared, and I have the time on my calendar to do it at that time, I would.

JUDGE JOHN BAKER: Okay.

JUDGE JOHN KITLEY: But that's not always the case.

JUDGE JOHN BAKER: Well, I understand. But I mean, it's conceivable that it would go as it was originally intended.

JUDGE JOHN KITLEY: Yes.

And, your Honor, when we talk about expeditious justice, when the case is reset, if the case does get reset, you're talking three weeks.

JUDGE JOHN BAKER: I understand.

JUDGE JOHN KITLEY: I mean, you're not talking six months to two years. You know, I might allow three weeks for the defendant to get an attorney, make sure that they get their witnesses subpoena'd and photographs or evidence.

Oh, by the way, on a default judgment, I don't

grant a default without evidence. I mean, they either have their evidence or the default doesn't take, at that first setting.

JUDGE JOHN BAKER: Okay.

If the person doesn't show up--

JUDGE JOHN KITLEY: If the the defendant-- First of all, I give a defendant a twenty-minute grace period. And then--

JUDGE JOHN BAKER: But if the defendant doesn't show up at all that day, is a default judgment entered?

JUDGE JOHN KITLEY: If the plaintiff has evidence. If not, no.

JUDGE JOHN BAKER: There's no witnesses; there's just an attorney?

JUDGE JOHN KITLEY: No, they have to have their documents in order; if necessary, witnesses, but that's not always necessary.

JUDGE JOHN BAKER: If they have affidavits and things of that nature--

JUDGE JOHN KITLEY: If their case is in order, every exhibit is marked and placed in the file, then a default is granted in that situation.

JUDGE BETTY BARTEAU: I want to explain something I've been hearing: Where a defendant shows

1 up for trial, expecting it to be trial, has to take
2 off work or it's inconvenient and then it isn't heard,
3 there's either no judge there or there is no time to
4 try it, when he's been expecting a trial--
5 JUDGE JOHN KITLEY: I'm glad you asked
6 that question, your Honor. Because this is what we've
7 been meeting about this for a year, for a year with
8 Judge Rosenberg, is a pamphlet to make sure defendants
9 know what their rights are. And until they get to
10 court and they see what their rights are, and they
11 know they can subpoena witnesses, and they know they
12 can conduct limited discovery, then until you inform
13 them they don't know if they're ready for trial; they
14 don't have a lawyer. They are there pro se, without a
15 lawyer; they don't know if they're ready to go; they
16 don't even know they can subpoena--they don't know
17 they can go to my support staff and say, "Can I please
18 have a subpoena?" And by the way, we'll serve it for
19 them for thirteen dollars.
20 JUDGE BETTY BARTEAU: But I think that
21 the points that I've been hearing today, that they
22 understand something from the notice that they
23 received that it's set for trial--
24 JUDGE JOHN KITLEY: Yes.
25 JUDGE BETTY BARTEAU: --and so that's

1 what they're expecting. And then it doesn't happen.
2 JUDGE JOHN KITLEY: Well, like I say,
3 what's good for the goose is good for the gander. I
4 mean, if the plaintiff and defendant both believe
5 they're ready, and they all have their evidence and
6 that can be done, yes. But if the defendant needs a
7 continuance--
8 I mean, how can you force a defendant into trial
9 at the first trial setting, until they understand what
10 their rights are and they understand what they can do?
11 So there is another side to that, not trying that
12 case that very first appearance, because the defendant
13 does need to be advised of his rights, what they can
14 do, and given a reasonable amount if time to do that,
15 hire lawyers, subpoena witnesses, conduct discovery
16 just like lawyers would do.
17 Thank you.
18 JUDGE JOHN BAKER: Thank you.
19 We had one other gentleman?
20 MR.LOU BORGMANN: Thank you, sir.
21 My name is Lou Borgmann, B-O-R-G-M-A-N-N.
22 Hi, Judge. How are you?
23 I have been an attorney in Indianapolis for
24 thirty-eight years. I represent, among other people,
25 landlords and a collection agency collecting for

1 landlords.
2 I would address the comment on a continuance to
3 say--and that's not my main point--that in fairness to
4 both sides I believe the rules should indicate that
5 either side is entitled to a continuance the first
6 time, not only for judicial efficiency but in fairness
7 to all parties. I think the courts have advocated
8 mediation or resolution settlement, and the
9 opportunity to talk to people at that first hearing to
10 try to resolve the matter is very important for the
11 court system. Without that, I think the courts would
12 be very overloaded.
13 Now, since I represent landlords, the primary
14 point that I would like to make is that, as you know,
15 landlord-tenant cases are bifurcated hearings, where
16 the first hearing is the possession hearing, the
17 second hearing is the damage hearing.
18 At the first hearing, it's been my experience on
19 the possession hearing that between eighty and
20 eighty-five percent of the time it's a default, with
21 nobody appearing. If they do appear, most of the time
22 it's through an agreement that they will vacate by a
23 certain date. The only dispute at that time is how
24 much time they have to move, normally. That's when
25 they go in front of the judge and say, "Judge, I'd

1 like to have a week or ten days" or whatever. The
2 judge in his discretion can make that determination.
3 But otherwise, very few times do people actually
4 dispute breach of lease. So to require everybody to go
5 in front of the judge on a breach of lease I think is
6 a vast wastefulness of time. You've got other people
7 sitting there that the court can hear much--on a much
8 regular basis on a contested case.
9 Now, I think in these possession hearings it's
10 very important to understand the legal maxim that
11 justice delayed is justice denied. If a landlord does
12 not gain possession of his property as soon as
13 possible, he is not only having an economic loss; the
14 other residents in his complex are having an economic
15 loss, because he has to add that to their rent as
16 overhead.
17 So I think it's very important for judicial
18 expediency to have that matter as soon as possible and
19 go ahead and then worry about the damage hearing at a
20 later time--a month or six weeks--well, more than
21 that, forty-five days under the fair debt law.
22 JUDGE JOHN BAKER: You're talking about
23 cases where you're asking for immediate possession and
24 also back rent; right?
25 MR.LOU BORGMANN: Well, we don't ask

1 for back rent at the initial hearing.
2 JUDGE JOHN BAKER: No, but you have--
3 MR.LOU BORGMANN: We may at some time
4 if there's a breach of lease, but at the first hearing
5 it's only a determination as to whether or not there's
6 been a violation of the lease or a violation of the
7 contract. The second hearing--
8 JUDGE JOHN BAKER: What would that
9 violation be?
10 MR.LOU BORGMANN: Nonpayment of rent.
11 JUDGE JOHN BAKER: Isn't that what I
12 just said?
13 MR.LOU BORGMANN: I'm sorry; I
14 misunderstood you.
15 Nonpayment of rent, or a noneconomic violation,
16 such as criminal activity on the property.
17 JUDGE JOHN BAKER: Right; I can
18 understand that. But in most instances if a person's
19 behind in rent, you make a claim for fifteen hundred
20 dollars in rent and immediate possession; right?
21 MR.LOU BORGMANN: Right. I don't make
22 a claim for any dollar amount. I'll make a claim for
23 possession, and then after the people have vacated the
24 property, the apartment within forty-five days sends a
25 letter to them as to how much money they are claiming.

I then send them a letter saying, "This is what is being claimed, plus reasonable attorney fees."

JUDGE BETTY BARTEAU: There might be damages.

MR.LOU BORGMANN: And physical damages to the property.

JUDGE JOHN BAKER: Do you file another claim for--

MR.LOU BORGMANN: No, sir. The notice of the damage hearing is scheduled as put on the initial claim, so the person that receives the initial claim has two hearing dates: The first hearing date is the possession hearing date; the second hearing date is the damage hearing date. So they're well aware, once they were served, that there will be a second hearing date.

JUDGE JOHN BAKER: And the first date, I don't question the fact that I'm behind in my rent, and I know I'm just going to be put out, and I think I'm behind by a month. And you make that claim, I gather; is that correct?

MR.LOU BORGMANN: I make a claim that there's a violation of the lease, yes. Violation of the contract, the nonpayment of rent.

JUDGE JOHN BAKER: That's all you say?

1 You don't say how much?
2 MR.LOU BORGMANN: I will say, if the
3 judge asks, two months of rent, or one month's rent,
4 or whatever--
5 JUDGE JOHN BAKER: But you don't put
6 that in your claim?
7 MR.LOU BORGMANN: I just say,
8 "Violation of lease, paragraph 6 of the lease," which
9 references nonpayment of rent. They know what it's
10 for.
11 JUDGE JOHN BAKER: Okay.
12 MR.LOU BORGMANN: The lease is also
13 attached.
14 JUDGE JOHN BAKER: I understand.
15 How does the defendant know how much money you're
16 claiming?
17 MR.LOU BORGMANN: Well, we don't know
18 how much money we're claiming at that initial hearing.
19 JUDGE JOHN BAKER: How--
20 MR.LOU BORGMANN: We don't know the
21 whole amount of damages.
22 JUDGE BAKER: That's not my question,
23 sir.
24 How does the defendant ever know?
25 MR.LOU BORGMANN: How does the

1 defendant ever know how much money we're claiming?
2 JUDGE JOHN BAKER: Yes.
3 MR.LOU BORGMANN: Well, the apartment
4 is sending them a letter within forty-five days after
5 he vacates the property, as to the amount of money
6 that they're seeking.
7 JUDGE JOHN BAKER: But what is he
8 seeking?
9 MR.LOU BORGMANN: I'm required by
10 statute.
11 JUDGE JOHN BAKER: Okay. And they send
12 that to the last known address, which is--
13 MR.LOU BORGMANN: Or the forwarding
14 address that the defendant gives to the apartment when
15 he vacates.
16 JUDGE BAKER: And that's the only
17 formal notice that the--that you are making of the
18 financial claim.
19 MR.LOU BORGMANN: On the Notice of
20 Claim, yes.
21 I mean, later on, when we send the letter, and
22 I'll also send a letter to him, saying that I'm the
23 attorney and here's the amount that they are seeking,
24 and they have a right to request, pursuant to Fair
25 Debt law, how they--

JUDGE JOHN BAKER: How does--

MR.LOU BORGMANN: --validation of the debt.

JUDGE JOHN BAKER: How does the judge know that you didn't tell Mr. Smith that you were claiming six hundred dollars and when you get into court you are claiming six thousand?

MR.LOU BORGMANN: You mean at the damage hearing?

JUDGE JOHN BAKER: Yes, sir.

MR.LOU BORGMANN: We've got to prove at the damage hearing what our loss is. We have got the forty-five day letter, too, or they can't get anything.

JUDGE JOHN BAKER: I understand.

I don't understand if there is ever a claim made in court, noticing the defendant of what the financial challenge is. And he's saying, "No, that's not right."

JUDGE DOUG STEPHENS: My name is Doug Stephens.

I just want to point out, I think there's a little bit of confusion about what's going on.

Most of the Notice of Claims for real estate usually allege that--and I think we are fairly

1 standardized in this regard, that some of the filers
2 might not use forms that we have offered them to have.
3 So they're given-- The lease was breached because of
4 nonpayment on a certain date. Some of the courts
5 require that they stick in for the amount that's due
6 as of the date of the hearing; some don't. I think in
7 my court it indicates that you have to allege a breach
8 of nonpayment and what date it happened.
9 JUDGE JOHN BAKER: He says he does not
10 do that.
11 JUDGE DOUG STEPHENS: And I'll have to
12 talk with Lou about this.
13 MR.LOU BORGMANN: I'm not sure that's
14 true--
15 MR. MIKE MADDEN: But I would ask why
16 they would give a forwarding address.
17 JUDGE JOHN BAKER: We're not going
18 to get into-- It's a fair question. It's a fair
19 question. We're not going to have a conversation now,
20 Mike.
21 MR. MIKE MADDEN: No, I just wanted
22 to--
23 Do you mean-- If I was in that apartment and they
24 kicked me out, why would I give him a forwarding
25 address, if I owed him money?

1 JUDGE JOHN BAKER: You have to if you
2 want to get your damage deposit back.
3 We're not going to do this tonight. Just stop it.
4 Thank you, sir.
5 JUDGE JOHN KITLEY: Sir, one other
6 comment that I want to make, concerning a rule change.
7 If a resident would request a jury trial and the
8 matter is then venued downtown, that process can be
9 delayed for quite a period of time, and the landlord's
10 not entitled to possession of the property until the
11 court sets it for hearing downtown.
12 I think that the rule should indicate that a
13 possession hearing is an equitable remedy, an in rem
14 action, that the Small Claims Court ought to retain
15 jurisdiction on the issue as to whether or not there's
16 been a breach of lease.
17 JUDGE BAKER: Why would not the
18 Superior Court have that immediately?
19 MR. MIKE MADDEN: Because, by the time
20 the Small Claims Court sends it from here downtown and
21 they docket it and we replead it, and they set it for
22 hearing, it's several weeks later. Months later.
23 JUDGE JOHN BAKER: Is there anyone else
24 who has--wants to make a statement?
25 Yes, sir.

1 MR. DON LEVENHAGEN: Thank you, Judge.
2 My name is Don Levenhagen, L-E-V-E-N-H-A-G-E-N.
3 I'm a partner at the law firm of Landmann & Beatty
4 here in Indianapolis. Our law firm represents, for
5 the most part, landlords. And we practice on a daily
6 basis in all the Small Claims Courts in the city. We
7 also work closely with a collection agency with
8 respect to our landlord-tenant clients.
9 My own personal experience in Small Claims Court
10 is, when I was a young lawyer, twenty-some years ago,
11 I practiced there at a point in time where some of the
12 judges were not lawyers, did not have legal
13 experience. And now I have joined the firm in the
14 last couple years, and now I have got back into Small
15 Claims practice and, you know, find a bench that I
16 think is tremendously improved over the old days--very
17 diligent, intelligent, well--well, a very prepared
18 bench that does a pretty good job.
19 My comments are that, from our experience we think
20 the system works pretty well, given the constraints
21 that it has to work under.
22 The amount of cases they have to deal with, the
23 limited staff and judges that they are given, it's
24 amazing that they do as well as they do.
25 And we need to keep in mind that, you know,

1 certainly the courts can always do better, and
2 no-one's beyond investigation or improvement; you can
3 always do better. But we need to keep in mind, if
4 we're going to be making rules, keep in mind that,
5 you know, there's certainly going to be individual
6 cases that the people--and we've heard some tonight
7 where they have not been treated professionally,
8 respectfully, or fairly. And I do not doubt that
9 those cases exist. And to that, you know, we can only
10 apologize.
11 But until we have more resources, more judges,
12 more staff, to give people the kind of individual
13 attention that maybe people like you and I put a high
14 value on justice, we think they
15 deserve--unfortunately, you know, that's going to
16 happen, and we apologize for that.
17 JUDGE JOHN BAKER: Is it your
18 impression, sir, that there are--the courts that
19 handle these types of cases are understaffed both
20 judicially and with court personnel?
21 MR. DON LEVENHAGEN: I think that
22 their--they do not have the funding as far as staff
23 and judges to maybe give the kind of attention that
24 put a higher value upon justice, that maybe--and I'm
25 not criticizing our representatives; they set the

1 budgets--but, you know, they've got tough choices to
2 make.
3 But I do think that they have a tremendous case
4 load, have a tremendous burden of work, and they do
5 very well with what little they are given.
6 And my other point being that, you know, I don't
7 think the system is broken. I think it can be
8 improved, like any system. But my experience has
9 been--you know, getting back into dealing with these
10 courts, that, you know, they do do a good job. I
11 don't feel, the judges and I don't always see
12 eye-to-eye on rulings, but, you know, they are
13 professionals, they are respectful, and they are
14 thorough, and--
15 You know, the small, small minority of cases that
16 don't get handled right, we need to make sure that we
17 don't throw, you know, a log in the system to where
18 we're compromising the justice that the vast majority
19 of people are getting.
20 JUDGE JOHN BAKER: Thank you.
21 Sir, we have one more, the gentleman in the green
22 sweater.
23 You've been very patient thus far. Please stay
24 that way.
25 Go ahead.

1 MR. KEVIN HENDRICKSON: My name is
2 Kevin Hendrickson, H-E-N-D-R-I-C-K-S-O-N.
3 I recently just had a case in this court. I
4 thought that this was a hearing about what may be
5 wrong with the court or the people that have
6 complaints about Small Claims Court.
7 I have a little bit of knowledge, after being a
8 policeman for twenty-two years, about presenting
9 evidence. But I had some damage to my property,
10 beyond, you know, my control. And I had--I called a
11 dry-up company to come in and do some work. My
12 contention was that they done more damage, or as much
13 damage as what they did good.
14 So I tried to negotiate the bill with the owner of
15 the company. And he says, "Well, your insurance
16 adjuster agreed to this amount." So I filed a claim
17 on November 3rd.
18 Well, I had a P.O. box number, is all the address
19 I had. So to my understanding was that the court sent
20 'em a certified letter. Now, to this day I don't know
21 whether they ever got the letter or not. Or whether
22 the letter was sent back to the court or what. I have
23 asked, I know at least three times, probably more, and
24 to this day I still don't know.
25 So anyway, they went ahead and re-served them

again. A woman shows up for court, and at that time the judge told her that, because they're a corporation, they had to have an attorney. Well, so they set it for another hearing.

So then I guess they get a lawyer. Setting in a roomful of lawyers and judges. But I have been around enough to know, if you show up in court--and probably most any court, but this is what Small Claims Courts, in my opinion, was supposed to be. You know, it's a--usually a small amount to begin with, and all you want is justice. But there again, as I've seen in the past, if you show up and you represent yourself and they have a lawyer, you are probably not going to win the case.

And like I said, I have a little experience in presenting evidence, and I was done unjustly. I live in this township, and not very far away, and I'm telling you, these companies, dry-up companies--or ServPro, that's who I filed suit against--they're a franchise, owned by individuals, and even the contractors that I had come in and do the repair work told me, said, "I've never seen them do work like this before."

JUDGE JOHN BAKER: Mr. Hendrickson, did you bring those contractors with you when you came to

1 court?
2 MR. KEVIN HENDRICKSON: No, I didn't.
3 JUDGE JOHN BAKER: Did you bring their
4 statement?
5 MR. KEVIN HENDRICKSON: No, I didn't.
6 JUDGE JOHN BAKER: When you look back
7 on your experience, do you think it might have helped
8 your case if you brought a statement from an
9 independent contractor?
10 MR. KEVIN HENDRICKSON: Well, here's
11 the thing about that: It's like I said, it comes down
12 to dollars and cents. You know, them contractors has
13 got other things to do.
14 JUDGE JOHN BAKER: I appreciate that.
15 MR. KEVIN HENDRICKSON: Okay.
16 I contacted several lawyers myself, that says,
17 "Well, the amount that you are actually suing for is
18 not really worth your time and trouble, for you to
19 hire a lawyer." And they didn't really want to fool
20 with it.
21 But, like I said, the judge told them, because
22 they're a corporation, they have to have a lawyer.
23 And I'm telling you, I don't care if--you know, I am
24 retired, been retired for a long time, and if you go
25 to court and you don't--and a lawyer appears against

1 you, the judge is going to side with the lawyer.
2 JUDGE JOHN BAKER: You would agree with
3 Mr. Massey, that maybe we need to change the rule.
4 MR. KEVIN HENDRICKSON: Well, yeah, I
5 would think so.
6 JUDGE JOHN BAKER: Okay. Thank you,
7 sir.
8 Is there anyone else that wants to be heard?
9 Robert.
10 JUDGE ROBERT SPEAR: Thank you, your
11 Honor.
12 Robert Spear, R-O-B-E-R-T S-P-E-A-R, the judge
13 down here.
14 I want to thank the Court of Appeals judges for
15 coming down here on behalf of the Supreme Court. I
16 think that it's important that we be able to
17 reevaluate all the courts in this state periodically,
18 from the Supreme Court all the way down to the Small
19 Claims Courts, remembering that the purpose of the
20 courts is to allow quick, fair decisions of small
21 cases and small dollar figures, where lawyers are
22 unnecessary, and to that extent we need to have a
23 balance for the plaintiffs and defendants and rules
24 and the statutes. A lot of what I might have said
25 tonight has been covered by other speakers tonight, so

I won't bore you guys.

I have something that's probably out of print. I was given this book by my predecessor as a judge. It came out in 1980, and discusses the passage of the Small Claims Courts in 1974, created the Small Claims dockets around the state. There's a chapter on Marion County. I think it's fairly instructive.

I have one thing I noted in the paper Tuesday, that there were two individuals that felt like they had been unfairly treated by the courts, out of some seventy thousand a year and about forty-five to fifty thousand upwards of nine years, and one of those individuals in fact who claims that it was suppressed from the public record and signed an agreed judgment which he and his other individual had paid off in 2008, 2010.

So I'll leave it to your sound discretion about what that means.

Now one of the things we do--I have to do down here is, we have eight thousand Chin living in Perry Township, who are refugees from Burma for political and religious reasons.

And so various elective officials, and in fact appointed officials, had a little meeting last fall with them, and among other things the constable and I

1 went down there and tried to explain for to this group
2 that was--and all proceedings that were in both
3 English and Chin--what happens.
4 Now, frankly, it's a very law-abiding community,
5 and I've only seen three of them in the six months, so
6 they don't really gain very much from talking to me or
7 to the constable, but in fact--in fact I did have one
8 the other day, and finding an interpreter for an
9 obscure hill dialect, of the people that aren't
10 Burmese and don't share either their religion or their
11 alphabet or the language, is very difficult. But,
12 fortunately, the school system down here has a couple
13 of folks that have been of assistance to us.
14 I noticed that you folks have gotten a copy of the
15 students report before the court. I would suggest,
16 referring to the current--well, I'll put it, the 2005
17 Small Claims Manual, which probably does need to be
18 updated, and it needs a Marion County section, because
19 there are different appellate sections because it is
20 only for the rest of the courts with serious problems,
21 because people that sit there and tell me that so the
22 the Court of Appeals, which they tell me.
23 I guess I'd also point out that we already have
24 venue rules, and they're statutory. They came about
25 as a federal lawsuit in the 1990's. At least I was

1 still around. And it says Venues, Small Claims Courts
2 in Marion County. The only mandatory one is a
3 personal jurisdictional one, one is for landlord-
4 tenant, which is a good thing.
5 The rest of them do have a preference of where
6 venue lies, is waivable. And I would point out that
7 the standard claim forms used in my court, anyway--I
8 think it's pretty much standard around the county--
9 lists those things. So that I think convenience of
10 the courts to both plaintiffs and defendants are
11 important.
12 Out of fifty-two hundred cases, I have only eight
13 or ten requests for venue changes of township this
14 year. Most of which we granted as proper.
15 I think the most important thing we need to
16 remember is fairness to both parties: Both parties
17 have a right to trial. They also have a right to
18 settle, which I think we try to put kind of a hand
19 out, nine of us judges do. Lkj lkj
20 And it strikes me that there would be unintended
21 consequences from a mandatory rule that couldn't be
22 waived on venue and such, as there are consequences
23 that are deserving of careful study.
24 And other than that, I'm at your disposal.
25 JUDGE JOHN BAKER: Thank you, sir.

I reiterate our appreciation for the Township Trustee making this hearing room available and for Judge Spear serving as our host. Judge Barteau and I appreciate the input that we have had thus far.

I remind all of you that we are going to continue our public hearings. Next week it's at six o'clock. We're going to be the guests at Pike Township, and thereafter, a week--two weeks from tonight we're going to be the guests of Judge Rosenberg in the Circuit Courtroom in the City-County building.

I want to make sure that all of you know that we have forms here for any of you who want to write a note to us, so that we can include that in our information-gathering process. And I believe we also have, distributed back in the back of the room, back part of the room, a document that gives a specific email address for those of you who want to contact us electronically.

Thank you very much for your input. And we will stand adjourned.

[The meeting was adjourned at 7:49 p.m.]

STATE OF INDIANA]
] SS:
COUNTY OF MARION]

C E R T I F I C A T E :

I, DAVID R. OESTERREICH, the undersigned Court Reporter and Notary Public residing and maintaining offices in the City of Indianapolis, Indiana, do hereby certify:

That at the time and place described above, I reported to the best of my ability in stenotypy all words spoken by all parties attending in the course of the proceedings, including any objections made by all persons present;

That I reduced my shorthand notes into the foregoing typewritten transcript, which transcript is a true record of the testimony and/or statements given by all individuals indicated herein;

That I am not a relative, employee, attorney, or counsel of any of the parties, nor a relative or employee of any such attorney or counsel, nor am I financially interested in this action.

IN WITNESS WHEREOF I have affixed my Notarial Seal and signed this certificate on the 3rd of March, 2012.

_____ [Seal]
David R. Oesterreich, Notary Public
County of Residence: Marion
My Commission expires on August 28, 2016

1 BEFORE THE INDIANA SUPREME COURT
2 - - -
3
4
5 PIKE TOWNSHIP
6 SMALL CLAIMS HEARING
7
8 ORIGINAL
9
10 - - -
11 PROCEEDINGS
12 in the above-captioned matter, before Indiana
13 Court of Appeals Judges John G. Baker and Betty
14 Barteau, taken before me, Lindy L. Meyer, Jr., a
15 Notary Public in and for the State of Indiana,
16 County of Shelby, at the Marion County Small
17 Claims Court, Pike Division, 5665 Lafayette Road,
18 Suite B, Indianapolis, Indiana, on Wednesday,
19 February 29, 2012 at 6:01 o'clock p.m.
20 - - -
21
22
23 William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA
24 12922 Brighton Avenue
Carmel, Indiana 46032
25 (317) 848-0088

APPEARANCES:

ON BEHALF OF THE INDIANA COURT OF APPEALS:
Hon. John G. Baker
Hon. Betty Barteau
Tim Nowacki

ON BEHALF OF DIVISION OF STATE COURT ADMINISTRATION:
Elizabeth Daulton
Yolanda Collins

ON BEHALF OF MARION COUNTY SMALL CLAIMS COURT, PIKE DIVISION:
Doug Stephens

SPEAKERS PRESENT:
David Baird
Marianne Hunnicutt
Roger Vandrey
Reita Vandrey
Don Bryson
Carolyn Bryson
Barry Stern
Judy Stern
Gary Schiffli
Milford Robinson
Paul Ogden
Joseph Guy
Brandon Magor
Sue Hildebrandt
Julie Andrews
Phillip LaMere
Jim Haskell
Kathryn Ransburg
James Cavanaugh
Kim Opsahl
Judge Doug Stephens
Van Barteau

- - -

6:01 o'clock p.m.
February 29, 2012

- - -

JUDGE BAKER: Good evening. I'll call this gathering to order. This is a second hearing of the Small Claims Task Force for Marion County. My name is John Baker. I'm a Judge on the Indiana Court of Appeals. I'm joined this evening by my former colleague, Betty Barteau, a retired Judge from the Indiana Court of Appeals, who serves as a Senior Judge with the Court of Appeals.

We have been asked by the Supreme Court to conduct a fact-finding mission to investigate and find out what's good and what might be improved with our small claims courts here in Marion County.

First, I'd like to express my sincere appreciation, our appreciation, to Judge Stephens and his staff here at Pike Township for making these facilities available for us, and to the Trustee and Advisory Board for being so courteous in allowing us to be here this evening. We appreciate it. We also thank the staff who's made our stay here so far very pleasant.

We have today a court reporter's service, which we have engaged. This gentleman here to my

1 left, your right, is recording these proceedings,
2 and so it is that I will ask when you are called
3 upon to make a statement, if you would, for two
4 reasons, come here, if you could. If you're
5 unable to come here, I understand, but if you
6 could stand over in this direction, you'll be
7 closer to our court reporter so he'll be able to
8 hear you, as well as will Judge Barteau and I.
9 (Laughter.)
10 JUDGE BAKER: As you people might
11 know, you have heard stories that when we age, our
12 hearing is challenged. I know that's not for my
13 colleague.
14 JUDGE BARTEAU: That's not true.
15 JUDGE BAKER: I would ask everybody to
16 be remembered -- be reminded that you want to do
17 what you can to turn off your cell phones, make
18 sure that they are not going to interrupt the
19 proceedings, but check.
20 And we will ask you to make your
21 statements. Please understand that Judge Barteau
22 and I cannot provide any relief in your individual
23 case today. There is a process for appeals of
24 small claims, and that may be something that we
25 discuss, but it is -- we want to know what your

experience has been, good or bad, any areas that you think are outstanding, and things that you think might need to be improved.

I have been given -- some of you indicate that you are here and you would like to make a statement, some of you just said you just want to come and watch, and you're more than welcome to be here, and we thank you very much for your presence.

Our first statement -- and I would ask if you'd try to keep it to three to five minutes, if you could. I know -- I see some attorneys in the room, and I know that asking them to curtail their remarks to three to five minutes is almost impossible, but let's work at it. Thank you.

My first indication here is David Baird.

MR. BAIRD: Yes.

JUDGE BAKER: David, would you stand and tell us your name, and spell your last name, if you would, for the court reporter?

MR. BAIRD: Okay. David Baird, B a i r d.

JUDGE BAKER: Thank you, David.

MR. BAIRD: I'm the former Trustee of Wayne Township, so Pike and I, we're neighbors,

1 and as it pertains to the Small Claims Court,
2 having been very involved in Wayne Township, the
3 Small Claims Court is something that I feel that
4 we can't do without. The volume of cases that
5 Pike staff and Wayne Township staff, Center staff,
6 that we're doing, it's a work in progress.
7 Not everyone goes -- of course, both of
8 them going to come out pleased at the results, but
9 they -- for the most part, I feel like they have
10 been served, and they feel like they've been
11 served. They had a chance to state their case.
12 And so -- but I also look at it, it's a
13 work in progress, just like with any other. So,
14 in this -- in this investigation as to see, I
15 would ask you to keep an open mind of the sheer
16 volume of cases, the -- I don't know how to --
17 it's -- you're very involved with the clients. I
18 mean you have an intimacy that I feel with so many
19 clients. A lot of courts are doing 10,000 cases,
20 and so you're asking a lot of the employees, and
21 they're staying on schedule.
22 So, to keep an open mind to be -- to give
23 us, you know, a fair look, because if not for us,
24 then we'd have to go downtown, and then, you know,
25 it's always been a backlog with them, and so we

would like to see the courts remain in the hands of the townships.

Thank you.

JUDGE BAKER: Thank you, sir.

JUDGE BARTEAU: Mr. Baird?

MR. BAIRD: Yes, ma'am.

JUDGE BARTEAU: There's never been a discussion of doing away with the Small Claims Court. You said in your opening statement that they're necessary. We realize that. It's just a matter of how they function, and that's what we're here to hear about. But --

MR. BAIRD: Okay. Well --

JUDGE BARTEAU: -- there's never been an issue of doing away with Small Claims. Of course they're necessary.

MR. BAIRD: Well, I guess what I was referring to, I think, was a couple of years ago, when they did their township-wide assessments of the entire state, and Indianapolis the only one having Small Claims Courts, they were talking about they needed maybe to be shifted to downtown instead of under the purview of the trustees and the different townships.

JUDGE BAKER: There is going to be, I

suspect, an ongoing discussion as to where the township -- where the Small Claims Courts should be located.

JUDGE BARTEAU: Uh-huh.

JUDGE BAKER: It's fair to assume, I think, that whether they should be under the township government or county government or state government, that's open for discussion, but what we're most interested in is how they're working now. So, thank you very much for your input.

Marianne Hunnicutt.

MS. HUNNICUTT: Okay.

JUDGE BAKER: Hi. Marianne, would --

MS. HUNNICUTT: Hi.

JUDGE BAKER: -- you state your name and spell --

MS. HUNNICUTT: My name is Marianne Hunnicutt, H u n n i c u t t. I have a couple of comments I'd like to make. I live in Washington Township. I am -- I was summoned to court recently, and the company that I was on -- going to court on is in Washington Township, but yet I was summoned to appear in Decatur Township.

JUDGE BAKER: And I guess that this might have been something to do with a medical

bill.

MS. HUNNICUTT: Correct, exactly.

JUDGE BAKER: Okay.

MS. HUNNICUTT: And the company is right there near the Washington Township Small Claims Court, so I'm not understanding why I was made to go all of the way down to Decatur Township and lose a half a day of work and all to appear in that situation.

JUDGE BAKER: It's not the first time we've heard that concern.

MS. HUNNICUTT: Okay.

JUDGE BAKER: Thank you very much for --

MS. HUNNICUTT: This is the first time, though, that I've ever had to deal with it.

JUDGE BARTEAU: Were you ever advised at any time about any right to change of venue?

MS. HUNNICUTT: No, I was not until recently, when I called the Washington Township and I asked could I have my case sent to their office, and they said yes. They said I would need to go down to the Decatur Township and put in a request to have my case transferred to their court, which I did that, which I submitted a

letter to the Judge, asking that my case be moved to that court, and then I went down yesterday and also picked up a piece of paper that the attorney had had me sign while I was in there, and it's got a judge's stamp on there. I never got to see a judge. I wanted to see a judge, and they said that was not available.

JUDGE BARTEAU: What was the paper?

MS. HUNNICUTT: The paper states on there that it's a judgment slash order.

JUDGE BAKER: Do you have a copy of it with you today?

MS. HUNNICUTT: Yes, I do.

JUDGE BAKER: Would you be willing to share that with us?

MS. HUNNICUTT: Yes, I would --

JUDGE BAKER: Thank you.

MS. HUNNICUTT: -- very much. Would you like that right now?

JUDGE BAKER: Yes, ma'am.

MS. HUNNICUTT: Okay.

JUDGE BAKER: And I will return it to you, if you'll leave with my assistant in the back your address.

MS. HUNNICUTT: Okay.

JUDGE STEPHENS: Judge Baker, if you want, a deputy constable will make a copy.

JUDGE BAKER: Okay. That'd be even better.

Thank you, ma'am. Did you agree to a judgment?

MS. HUNNICUTT: No. I wanted to see a judge. I asked to see a judge.

JUDGE BARTEAU: And this was out of Decatur, so --

MS. HUNNICUTT: Out of Decatur Township, yes. I was in a room with the attorney for the plaintiff.

I'm through.

JUDGE BAKER: Thank you very much.

JUDGE BARTEAU: Thank you.

JUDGE BAKER: Roger Vandrey.

MR. VANDREY: Thank you. Our situation is very sim --

JUDGE BAKER: I'm sorry, sir.

MR. VANDREY: Oh, Roger Vandrey, V, as in Victor, a n d r e y.

JUDGE BAKER: Thank you.

MR. VANDREY: And I live in Pike Township. Our experience is very similar to

1 Ms. Hunnicutt's experience, except it's ten years
2 older. We were in 2002 and we still remember it
3 quite -- well, fairly well. We were -- this was
4 also medical.
5 We live at -- near 79th and Michigan Road,
6 and we also went to the Decatur -- well, it's
7 called the Decatur Division, Small Claims Court,
8 on Foltz Street, which wasn't as bad as it may
9 have been for others because it's pretty close to
10 where I worked, but my wife had to come down, and
11 we went down there together. We went there -- we
12 had to go there three times.
13 I'm well enough off that I was able to
14 consult with an attorney before we engaged in the
15 Small Claims Court, and the best advice I got from
16 him is, "No matter who tells you not to -- you
17 don't need to show up, show up."
18 JUDGE BAKER: That was good advice.
19 MR. VANDREY: Because we were told
20 before our third appearance this case had been
21 resolved, we had won the case, they found that
22 we -- payment had been made by insurance, it was
23 just probably credited to the wrong account or
24 something. They told -- the hospital told us we
25 didn't have to show up, but we went down there

1 anyway, and I could tell from the look on the face
2 of the attorn -- the collector, he was very
3 disappointed that we showed up.
4 So, it -- but it still -- it took first --
5 the one time down there waited about two hours,
6 and then in a small room with the bill collector
7 and ourselves. The second time it was much
8 shorter. The third time it was about an hour
9 waiting, and then we just went up to the window
10 and they said yeah, the case has been resolved and
11 we could go. So, I don't think -- that last one
12 probably was not necessary.
13 JUDGE BAKER: I agree.
14 MR. VANDREY: So --
15 JUDGE BAKER: Thank you, sir.
16 MR. VANDREY: My wife is next, and she
17 has a lot different memory than me.
18 (Laughter.)
19 JUDGE BAKER: Reita.
20 MS. VANDREY: My name is Reita,
21 R e i t a, Vandrey, V, like Victor, a n d r e y.
22 As he said, we ended up going down to
23 Decatur. This was after a protracted thing, being
24 harassed by the collector, and we went down, and,
25 of course, they opened up the book, and they say,

1 "Okay. Go in this room and sit and wait."
2 JUDGE BARTEAU: By "being harassed,"
3 you mean phone calls or --
4 MS. VANDREY: Phone calls. Phone
5 calls.
6 JUDGE BARTEAU: -- letters?
7 MS. VANDREY: First I said, "Okay."
8 We always pay our bills right away and our
9 insurance company was very good, and I said,
10 "Would you send me a copy of what you say we owe,
11 showing -- a copy of the paper that I signed
12 showing what the done, what the date was, and my
13 signature?" And they said, "Okay."
14 And about two weeks later I got a copy of
15 just my signature, and they called me. I said,
16 "No, I mean this." And they called me again, you
17 know, kept calling, and finally I said, "No, I
18 need this," and they said, "We can do that."
19 So, they sent me a copy of just a date, not
20 even my signature. I said, "No, I need a copy of
21 the sheet that I signed." And eventually they
22 sent me a copy of another sheet and it said,
23 "surgery," but it didn't have my name or the date.
24 And --
25 JUDGE BAKER: I guess if you keep

calling, eventually you'll get the whole thing. It's like a puzzle, huh?

MS. VANDREY: Well, and the next thing I knew, the deputy showed up with a summons for court, the court summons. He said, "You're to show up in court, and you'll have a chance to tell the judge your side of it." So, we went down, and he worked down near there, but I worked at Lafayette Square, and I took time off and went down to this person.

They open up their folder, they say, "Go sit in the room." So, we sat in the room about two hours, and finally they called our name, and we went up through this little doorway, and I said, "It's not going to be in this courtroom?" They said, "Oh, no, the judge isn't here today."

And they took us in the little tiny room with the plaintiff person, who harassed me, yelling at me about, you know, "how much do you make," and "no, you have to pay this," and "we know you're wrong." And when my husband started to say something, she just really loudly yelled at him, "Shut up. You can't say anything." And he was the primary insurance holder.

And anyway, so that's aside from what we

1 think of small claims itself, but I think there is
2 a conflict of interest having an office, a
3 dedicated office, even though it's a tiny one, for
4 the plaintiff's representatives in the courthouse.
5 And we never saw the judge that day, and finally
6 she --
7 JUDGE BAKER: You were told that the
8 judge was not in the building?
9 MS. VANDREY: They told me, "There is
10 no judge here today."
11 JUDGE BAKER: Okay.
12 MS. VANDREY: And then she said,
13 "Well, we would have to get a copy of the checks
14 showing that we had paid it," and I said, "Well,
15 you have access to our insurance companies. Why
16 haven't you asked them for a copy?" She said,
17 "You have to do that." So, I did get -- I called
18 Tricare, which was our secondary, which I thought
19 I had the hardest time with, and she said, "Oh,
20 certainly. It will take me a day or two to get it
21 out of the back records, and we will send a copy
22 to Westview and ask them to call you when they get
23 it, and I will send you a copy."
24 And I said, "Well, okay. Now all I have to
25 do is get the copy of the check from the primary

insurance company, and their billing people are no longer in business," and she said, "That's no problem, because they have to send us a copy anyway, so I'll send a copy of both to Westview." I'm sorry; I shouldn't have said that. Anyway, to the complainant, "and to you."

And I got a call from the company that was saying that we owe the money.

JUDGE BAKER: Okay. I can't do anything about insurance companies.

MS. VANDREY: Yeah.

JUDGE BAKER: I mean --

MS. VANDREY: Well, I'm leading up to the --

JUDGE BAKER: -- if I could --

MS. VANDREY: Okay. I'm trying to lay this out as quickly as possible.

JUDGE BAKER: Okay.

MS. VANDREY: And she said, "Okay. I'll go call them and tell them to call it off, that you did pay the bill, and that you won't have to worry about it." I said, "Now, do we still need to go to court since we have this summons?" She says, "No, I'll tell them to withdraw that," and I said, "Well, what about the court records?"

1 She said, "They'll take care of that and take it
2 off, too."
3 So, we came close to the time, and we
4 looked at each other and said, "Now, legally, if
5 we don't show up, they'll find in favor of the
6 complainant." So, we said, "Even --" we hadn't
7 heard from anyone saying not to come. So, we
8 went, and we sat there watching all of these other
9 people come up and go through the door, and
10 finally they called our name.
11 We went up, and, you know, you get there
12 and they open up the book. When we first got
13 there, the woman opened up this little pamphlet
14 with the file on our case, and she told us to go
15 on and sit down. Now, if it had been dropped,
16 they should have been able to look at that and
17 say, "It's been dropped. You can go home." So,
18 obviously they hadn't dropped it until we sat in
19 that room. And we never saw a judge. And then --
20 JUDGE BAKER: Was the judge there the
21 second time?
22 MS. VANDREY: No. And they called --
23 finally they called us up --
24 JUDGE BAKER: I guess I'll go ahead
25 and beg the question: Was the judge there the

1 third time?
2 MS. VANDREY: We -- we never saw a
3 judge.
4 JUDGE BAKER: Okay.
5 MS. VANDREY: Okay. But the last time
6 that we were there, when it was supposed to have
7 been dropped, the -- when they finally called us
8 up, the clerk told us, "It's been dropped. You
9 can go home." I said, "No, I need something
10 showing that this is -- that we've been found not
11 responsible for it, that it had been paid."
12 And they said, "Well, you can go home
13 anyway." And I said, "No, we need to get
14 something in writing, and I need something -- need
15 them to send notice to the credit bureaus that we
16 were not at fault." And so, she said, "Well, just
17 a minute," and we stood there and she went around
18 the corner into another little cubicle, and then
19 she called us.
20 See, you can see the lawyer around the
21 corner, and he did not want to give us a paper
22 saying it was -- been cleared, and he said, "Oh,
23 no, we don't have to notify the credit bureaus,
24 you have to." And I said, "No, I need something
25 in writing and I need you to send it to the credit

1 bureaus." We checked the credit bureau later to
2 make sure it had been done.
3 But there is a major conflict of interest,
4 and we had a court summons, but we never actually
5 had any court service. Never got to talk to
6 anyone. No -- nobody wanted to hear our side of
7 it, and it -- and I agree with the lady, that as I
8 understand it, they're not supposed to make it a
9 hardship for someone to show up in court.
10 JUDGE BAKER: Agreed.
11 MS. VANDREY: And I think that they
12 should not -- and, of course, their offices,
13 again, are in this area, and something needs to be
14 done about that.
15 JUDGE BAKER: Thank you, ma'am.
16 MS. VANDREY: But our biggest
17 complaint was that they gave space to the other
18 people.
19 JUDGE BARTEAU: Thank you.
20 JUDGE BAKER: Don and Carolyn Bryson.
21 MR. BRYSON: I'm Don Bryson,
22 B r y s o n. I'm a resident of Pike Township.
23 This is a case which involves my son, who lives in
24 Zionsville, Indiana. It is -- although I'm
25 confident that Judge Stephens would get -- the

case was assigned to Pike Township, and I have no problem were Judge Stephens. The problem that I have is: How can you assign cases from outside Marion County into Marion County? If you use that --

JUDGE BAKER: What kind of case was it, sir?

MR. BRYSON: It was a medical. It is a medical -- question of medical charges case.

JUDGE BAKER: And has it been resolved?

MR. BRYSON: Not yet, no.

JUDGE BAKER: Okay. Have you asked, or has your son asked, that the case be transferred to Boone County?

MR. BRYSON: No, sir.

JUDGE BAKER: Has he ever been told that he might have that right?

MR. BRYSON: No, sir. In fact, I asked the attorney myself the last time I was there, and he says this is the proper place for this to -- case to be heard.

JUDGE BAKER: Okay.

MR. BRYSON: My concern is: If you use this same logic, you could have a case

1 transferred down here from Fort Wayne.
2 JUDGE BAKER: I don't know that we've
3 had any, but we may find that to be, I agree.
4 MR. BRYSON: No, I'm just saying that
5 if you follow that logic.
6 JUDGE BAKER: Right.
7 MR. BRYSON: So, is that correct or
8 not, according to the current statute?
9 JUDGE BAKER: Well, I'm going to have
10 to defer on that, because I'm trying to find facts
11 rather than give legal opinions, but I do think
12 that there is a concern, which at our first
13 hearing we had some people who had received
14 medical services in a different community and
15 lived in a different community, but in fact were
16 brought to Marion County for the purposes of
17 collecting the debt. Now, I don't know anything
18 about your son's -- whether it was doctor's bill
19 or surgery bill.
20 MR. BRYSON: Yeah, it's a medical
21 bill.
22 JUDGE BAKER: Yeah. But it may well
23 be that the medical services were rendered here in
24 Marion County. I don't --
25 MR. BRYSON: Yes, they were.

MS. BRYSON: But a different township.

JUDGE BAKER: Where was --

MR. BRYSON: At St. Vincent's in Washington Township.

JUDGE BAKER: All right.

MR. BRYSON: But this is a bill collector that's bought the bill from St. Vincent's, I believe.

JUDGE BAKER: Okay. Thank you for your presentation.

MR. BRYSON: All right.

JUDGE BAKER: Barry and Judy Stern.

MR. STERN: Yeah. My name is Barry Stern. I'm a licensed real estate broker.

JUDGE BAKER: Barry, would you spell your last name?

MR. STERN: Stern, S t e r n.

JUDGE BAKER: Thank you, sir.

MR. STERN: And my wife, Judy Stern.

JUDGE BAKER: Okay.

MR. STERN: She's a salesperson. We are directors of Gateway West Townhouse Association. It's 155 units, and then we run a property management firm also, where we manage 37 units. We're heavy use of the court. We've been

here since Judge Kiel was the judge, and then Mr. Clutter, the attorney, and then Doug Stephens.

We've always felt the court did a fabulous job. We've a heavy use of the court. We probably filed at least a hundred small claims actions over the years, over about 20 years, and basically it's for lack of payment of rent, and there -- I can't even remember the last time I've been before Judge Stephens, because it's usually always settled ahead of time in the offices here or with the client. And I'm thinking of things that would speed that process along. Most of the clients -- I can't even remember when one of them requested a judge to do it. It's due to they lost a job.

The filing fee has gone up a lot, and we -- because we don't go before the judge, if something is made, we feel that maybe, depending on the paperwork, how the costs are allocated, that it would be nice if we didn't have -- if there could be a two-fee system of -- some type of nature like that would be very helpful for us.

We feel we're one of the heaviest -- or class of users. We also use Mr. Steel as an attorney that represents units that we do not personally own, and most of all of these cases are

settled, you know, with the client, and we feel the court is run enormously efficiently, and we have no complaints or anything against it.

And Judy, do you want to say a few words?

MS. STERN: Well, most of our filings are for possession of the real estate, you know, and sometimes people are able to pay and stay, which is our hope, and if not, it does eliminate cost and saves time for everyone. Of course, we have to file in Pike Township. The real estate's located in Pike, so we don't have the problem of cases being put outside of the township, so I can see that would be a problem if -- I wouldn't want to have to travel down to Decatur or somewhere. But we also feel it's run -- the clerks and everyone are very helpful, and --

MR. STERN: We couldn't exist without the court. We'd be out of business.

MS. STERN: Right.

MR. STERN: It's that simple.

JUDGE BAKER: I appreciate that. Thank you very much for --

MS. STERN: Okay. Thank you.

JUDGE BAKER: -- your presentation.

Gary Schiffli?

1 MR. SCHIFFLI: My name is Gary
2 Schiffli, S c h i f f l i. I'm an attorney here
3 in Indianapolis. I've practiced in small claims
4 courts for about 30 years. I do mainly medical
5 collection. I probably average 50 to 60 cases a
6 month. I'm one that primarily uses Pike Township,
7 and the reason I do is because it's been my
8 experience they're extremely efficient as far as
9 processing the paperwork, and that's important to
10 both myself and my clients.
11 I understand some of the problems that
12 various defendants have already addressed. I
13 think that it's something that the Board could
14 take a look at. I do think that right now the
15 notice of claim has the rights on there for a
16 defendant as far as a jury request, a motion for a
17 continuance, and also the right to transfer for
18 venue if that is desired.
19 And I do believe -- or I can say that in my
20 experience, out of all of my cases, I've probably
21 had four requests for venue change in the last two
22 years, and I would say that all four of these were
23 warranted, and the reason that the change was
24 requested was due to lack of transportation and/or
25 illness, and in those cases, obviously the court

1 granted the request and we heard those in another
2 township.
3 I guess what I would like the Board to look
4 at also is the right of plaintiffs in that I
5 represent a lot of individual or solo dental or
6 doctor practices who may average five or six cases
7 over a 60- or 90-day period. Well, when you talk
8 about the potential of changing, that you have to
9 file those in different townships, these
10 individuals came to a doctor or dentist for
11 services, they did not pay, and why should the
12 plaintiff be punished?
13 They should, for their purposes, be allowed
14 to group those together, file them where they feel
15 that they can at least be efficient and
16 potentially receive money back for the services
17 that were rendered. Again, I understand the
18 defendants and their position, but I would state
19 that many instances, especially on medical bills,
20 the dispute arises out of insurance issues,
21 because they don't understand their insurance,
22 they don't understand their explanation of
23 benefits.
24 If an individual comes to the court and
25 says that as we're talking, you know, I'm not

1 going to dispute it. I'm going to say, "Fine.
2 Then you can go in front of the judge." And that
3 is one thing that Pike especially goes overboard
4 as far as an individual defendant walking into the
5 court, when they first walk in, they're asked for
6 their papers, and the court staff tells them they
7 have the right to go in front of the judge if they
8 cannot reach any kind of a payment agreement.
9 JUDGE BAKER: I gathered, sir, that
10 Pike Township's a little different than maybe the
11 other townships we've heard about because the
12 judge is here.
13 MR. SCHIFFLI: That is cor -- I think
14 that's the issue, yes, yes. And that's why, from
15 going to other counties such as Hendricks,
16 et cetera, I also go outside of Marion County, a
17 lot of those counties, in their small claims
18 proceedings, they do have a little pamphlet which
19 explains how you handle matters pro se in the
20 small claims proceeding, that that might be
21 something that could be applied everywhere in
22 every township.
23 And/or possibly when you have a judgment
24 order, I think those are fairly standard
25 throughout, but on that judgment order that a

1 defendant signs before he leaves, or at least they
2 do in Pike Township, I think you could have some
3 kind of declaration in there that "I understand I
4 have the right to appear in front of the judge for
5 any reason if I do -- or am not in agreement with
6 the plaintiff." That could be something on that
7 judgment order.
8 So, I just think that that's something you
9 could take a look at, but I do believe that in the
10 notice of claim right now, there is the protection
11 of where the defendant can ask for a change of
12 venue, and all they have to do is ask. Whether
13 you want to change some kind of the circumstances
14 regarding how that is handled, by phone or they
15 have to turn something in, you know, that would be
16 up to the Board.
17 So, I just wanted to make those points.
18 JUDGE BAKER: Thank you, sir.
19 MR. SCHIFFLI: Thank you.
20 JUDGE BARTEAU: Thank you.
21 JUDGE BAKER: Mil Robinson.
22 MR. ROBINSON: First name is Milford,
23 M i l f o r d, last name Robinson,
24 R o b i n s o n. I am not an attorney, but I was
25 raised on Perry Mason, and so I'll try to be as

brief as I can.

My situation is that it's a landlord-tenant emergency-order case. It is currently in place, so I'll try to be careful about even mentioning the court or the judge or whatever. The issue here is as a nonattorney having the ability to request a change of judge. I don't even care about -- there's no issue about venue. The court that this is being heard in is the correct court for where the property is located and so forth and so on.

The issue is intimidating judicial behavior, quite frankly, and a reque -- a feeling that we need to request another judge, any other judge, to hear our case. I, again, have watched a lot of Perry Mason. I tried to look up the codes on the Internet. My sense is that the handbook, the small claims handbook, the small claims court handbook, is not being universally applied.

I've had some experience in more than one township, and it seems to me -- and interestingly enough, Pike is not one of them, but based on what I'm hearing, the system here may be considerably different, more efficient, than others, and that's kind of my sense also.

1 I'm not easily intimidated, but I was in
2 this case, wished that I had had counsel, because
3 I got into the middle of a situation where at one
4 point was threatened with 30 days of contempt in
5 court -- that is, 30 days in jail because of
6 contempt in court, when in fact the only people in
7 the room were the judge, the plaintiff, myself and
8 my daughter-in-law.
9 JUDGE BAKER: That's -- it doesn't
10 matter who's present other than the judge to be in
11 contempt. I --
12 MR. ROBINSON: Well, I understand
13 that.
14 JUDGE BAKER: -- mean it's pretty --
15 it has to be pretty egregious to be contemptuous.
16 MR. ROBINSON: Well, that was kind of
17 my thought, and I didn't raise my voice, didn't
18 threaten, whatever. He -- there was just
19 misbehaviors, in my opinion --
20 JUDGE BAKER: Okay.
21 MR. ROBINSON: -- the point is, and I
22 would -- the system for asking for a change of
23 judge, not venue, I think, could be improved --
24 JUDGE BAKER: Better articulated.
25 MR. ROBINSON: Communicated --

JUDGE BAKER: Okay.

MR. ROBINSON: -- and more consistency between the various townships.

JUDGE BAKER: Thank you, sir.

MR. ROBINSON: Thank you.

JUDGE BARTEAU: Thank you.

JUDGE BAKER: Good observation.

Paul Ogden.

MR. OGDEN: My name's Paul Ogden. I'm an attorney in Indianapolis. O g d e n, that's my last name.

JUDGE BAKER: Thank you.

MR. OGDEN: First I want to say that we have many fine small claims court judges, I should say that from the outset, and pike is actually -- of all of the townships I've been in, it's the best-run court. Staff is excellent, the judge is excellent, so I haven't got any problems with that.

The number one problem with the Small Claims Court is forum shopping. You have plaintiff's attorneys, God love them, I'm one sometimes myself, but they will look for a favorable venue, and whether it's Decatur Township or some other township, they look for that

1 favorable venue, some place that serves their
2 needs in terms of the judgments they receive, in
3 terms of how they're treated by staff, and that's
4 a big problem.
5 I think we need to -- right now the
6 landlord-tenant cases are the only cases where
7 it's controlled by where the property is, and I
8 think we need to change that. I think it needs to
9 be where the plaintiff lives or where the incident
10 happened, that that should be the particular
11 township that the case is filed in. I think that
12 would cure a lot of the problems.
13 Decatur Township has been mentioned a few
14 times. One of the reasons why -- and I don't know
15 if it's been mentioned yet -- that cases get filed
16 down there, there's no bus route down there.
17 There's no bus stop down there.
18 JUDGE BAKER: That's why they
19 shouldn't be filed there.
20 MR. OGDEN: That's -- exactly, but
21 sometimes collection attorneys will file down in
22 Decatur Township knowing that people can't get
23 to -- a ride to Decatur Township. You can't just
24 hop on a bus and go to Decatur Township. So, the
25 venue rule, the forum shopping is the number one

1 concern.
2 Collection cases, one of the problems that
3 we're seeing is that at the end of the collection
4 cases, they do not put in the file satisfaction of
5 judgment.
6 JUDGE BARTEAU: Satisfaction of
7 judgment.
8 MR. OGDEN: And what happens is seven,
9 eight years down the road, attorneys, we're all
10 looking for work, they start going through these
11 files and they find one where there's no
12 satisfaction of judgment in there, and they will
13 file a pro supp proceeding.
14 Had a case down in Decatur Township
15 where -- a $500 medical bill, a man's wages were
16 garnished to pay it, but they didn't put a
17 satisfaction of judgment into the file. He was
18 hauled back into court eight years later, and he
19 didn't have records showing that it had been paid.
20 It was only $500. It was a garnishment. Got
21 another judgment for the same amount, and he had
22 to pay it once again. That's -- so, that's a big
23 problem.
24 As far as -- a gentleman referred to cases
25 outside of Marion County. I had another attorney

of mine interview with a collection firm. It was up in one of the northern counties, I think it was Elkhart County, who said they filed their collection actions down here in Marion County. I said -- Small Claims Court of Marion County. I said, "How do you do that when there's -- the person's up there, the action happened up there?"

And they said -- and the collection attorney said, "Well, as long as they don't object, we can do it," which I have a little problem with in terms of ethically, but that is sometimes done as well.

Another thing that I'm sure hasn't been mentioned, but as a title insurance attorney where we had a clear title, one of the big problems with the small claims courts are that the computer system's not on the same system as the clerk's office. When they search for judgments that are liens on property, they would have to go to all nine townships.

As a title insurance company, you're leaving yourself open for a judgment being out there in one of the townships and not having found that. So, they absolutely need to link those -- that with the clerk's office.

1 And I think that's about all of the things
2 I had to say. I think the township system works
3 great. I think the convenience is good, but it's
4 not convenient if you live up in Lawrence Township
5 and they're filing cases down in Decatur Township
6 on you, so --
7 JUDGE BAKER: Thank you, Paul.
8 MR. OGDEN: Thank you.
9 JUDGE BAKER: Joseph Guy?
10 MR. GUY: Thank you. My name's Joseph
11 Guy, G u y. I am a collections attorney, and I am
12 also the past-president, current treasurer, and
13 have been the vice-president and secretary for
14 many years of the Indiana Creditors Bar
15 Association.
16 The -- my practice consists primarily of
17 med -- collection of medical bills and attorney
18 fee bills that originate -- the medical bills
19 primarily originate in the St. Vincent Hospital
20 system in Indianapolis and in Hamilton County, so
21 most of the cases that I file are in Pike Township
22 Small Claims Court and in Hamilton County.
23 The procedure in Pike Township Small Claims
24 Court when people come in is to channel them to
25 meet with attorneys to try to work things out

1 before cases are automatically taken in front of
2 the judge. This is not a conflict of interest.
3 We are not employees of the court, but we do need
4 a place, especially high-volume collection
5 attorneys like myself.
6 When we come to court with 30 to 50 files
7 that are set for that day, we need a place to get
8 set up so that we can talk with people and so that
9 we can do our paperwork, and so the Court let's us
10 go where we need to go to accomplish that. If
11 there is no agreement with the defendant, then it
12 is -- if it's an initial hearing and there's no
13 judgment, then it's set for a contested trial in
14 front of the judge. And if it's a pro supp and
15 there's no agreement, then you go to see the judge
16 right away.
17 The whole objective of the collections
18 attorney is to try to work out a payment plan.
19 The court is designed for contested situations,
20 pre- or post-judgment, to go in front of the
21 judge. There's always a judge in this building,
22 judge Stephens or a prearranged pro tem judge.
23 They have court three days a week here.
24 And I don't want -- I would -- I would hate
25 for there to be confusion about the alleged

1 browbeating incidents with people coming and
2 talking to attorneys or pro se plaintiffs and the
3 way that the court functions, because we're
4 talking about two separate things here.
5 JUDGE BAKER: You understand that in
6 some instances and in some venues -- and I'm not
7 suggesting that's the case here at Pike -- that
8 the public might not know the difference between a
9 collections attorney and a member of the staff for
10 the -- for the court, that they don't know the
11 difference that they believe that they're dealing
12 with.
13 We have had, candidly, some evidence where
14 courtrooms are just turned over to the collection
15 attorney and there is no judge in the building,
16 and there's no court staff, other than to give the
17 attorney the stacks of files.
18 MR. GUY: Well, that should not be,
19 and --
20 JUDGE BAKER: You know what? I
21 couldn't agree with you more.
22 (Laughter.)
23 MR. GUY: Yeah. And -- but it is not
24 that way in Pike.
25 JUDGE BAKER: And our hearing today is

not just about Pike.

MR. GUY: Yeah.

JUDGE BAKER: It's just that Judge Stephens was so kind to give us this wonderful room.

MR. GUY: Sure.

JUDGE BAKER: But yes, and I appreciate the fact that you made that distinction, but I agree with you, it shouldn't be that way.

MR. GUY: Yes, and it's not that way in Hamilton County either, I can tell you that.

JUDGE BAKER: I talked to Judge Sturtevant today.

MR. GUY: Yes, and there's also Judge Campbell --

JUDGE BAKER: Right.

MR. GUY: -- where I do most of my work up there, and it's definitely not that way in Judge Campbell's court either.

Judge -- I did want to point out that Judge Stephens routinely rules against me and my clients on issues.

(Laughter.)

MR. GUY: If there's a garnishment

order that poses an undue hardship on a defendant, then -- or if there's -- if we're unable to work out a payment plan on a pro supp before any garnishment orders, I tell the defendant, "Okay. Well, we need to go talk to the judge."

And so, we go talk to the judge, and the judge -- Judge Stephens will go less than half of the garnishment order and say, "Okay. We're going to have a garnishment order, but it's going to less than half of 25 percent of net disposable income," which is, of course, the statutory garnishment formula.

I am in favor of having Small Claims Court handbooks or pamphlets that itemize the Defendant's rights concerning change of venue, concerning exemptions, concerning, you know, the collection matters. I don't see why that's a problem. I know that for years down in Bartholomew County, Judge -- Magistrate Dickherbert down there was handing out defendant's rights pamphlets to defendants when defendants were brought in front of him, and I think the court did that as well, and I think it's a good idea.

I am against consolidation of the small

claims courts to one central downtown location. There are seventy to eighty thousand cases that are filed in the Marion County Small Claims Courts each year, and to put seventy or eighty thousand cases into one court, I think, would be a disaster.

I'm also against changing the Small Claims Rule 12 to require suits in the townships where the defendants live. Cook County, Illinois tried an experience in that regard for a period of four years. They were having the plaintiff's attorneys file in the townships there where the defendants lived, and it was such a disaster that they revoked it and put it back to the way it was before.

JUDGE BARTEAU: Why?

MR. GUY: I don't know, but Phil LaMere, he's here. He may know.

JUDGE BAKER: Well, we'll find out.

MR. GUY: Yeah.

JUDGE BAKER: We'll fully investigate it.

MR. GUY: Okay.

JUDGE BAKER: Anything else that you can tell us about our Marion County system?

MR. GUY: Yeah, yeah. I believe the notice of claim forms are already pretty uniform. I noticed there was a law student report that was done, and they were saying that the forms should be uniform, and I think the notice of claim for possession of real estate and the regular notice of claim for a lawsuit are pretty uniform, if you lok at all of the different courts -- forms that they use, that they require the plaintiffs to use.

Also, Judge Stephens has, on more than one occasion, asked the City of Indianapolis to extend the bus routes to get a drop-off point closer to this Court, and nobody seems to care when he makes that request, and I'm sure he can amplify that.

Also, I always file satisfactions of judgments. I think the rules require -- the plaintiff is required to file a satisfaction of judgment, and if people are not filing the satisfactions of judgments, it's not the court's fault, it is the fault of the plaintiffs.

And judgments are automatically electronically posted to the Marion County Clerk's Office is my understanding. All of the nine Small Claims Courts' judgments are electronically transferred to one giant judgment docket downtown.

1 That's what I understand to be happening.
2 That's all I have.
3 JUDGE BAKER: Thank you.
4 JUDGE BARTEAU: Thank you.
5 JUDGE BAKER: B. R. Magor.
6 MR. ROBINSON: Sir, could I just make
7 one point? The --
8 JUDGE BAKER: You need to stand up and
9 identify yourself; I'm so sorry.
10 MR. ROBINSON: The forms -- I've
11 already spoken. The forms are consistent, but the
12 way -- the procedures that are used are not.
13 JUDGE BAKER: Tell him your name,
14 please.
15 MR. MAGOR: Brandon Magor, M a g o r.
16 JUDGE BAKER: Go ahead, sir.
17 MR. MAGOR: I was recently the
18 defendant in a small claims action that originated
19 in June of 2010. When I -- after winning a
20 judgment in that case as a defendant based upon my
21 counterclaim in Center Township, I was actually
22 brought into Superior Court under the de novo
23 rule, so essentially it was a completely new trial
24 tried on different issues, different facts, just a
25 completely new trial, where I actually lost, and

1 now a judgment's, in total, closer to $6,000.
2 So --
3 JUDGE BAKER: And you were gracious
4 enough to come and visit me in the State Capitol
5 Building. My recollection of our conversation is
6 that you secured a judgment for $240.
7 MR. MAGOR: Yes.
8 JUDGE BAKER: And because of accruing
9 interest and continually increasing attorney's
10 fees, the judgment will be in the neighborhood of
11 $6,000 against you.
12 MR. MAGOR: Yes.
13 JUDGE BAKER: Is it also the case --
14 after our discussion, I believe, I did some
15 research. Is it the case that even though the
16 judgment was secured against you for an amount of,
17 I believe, $3900, it has been increased since then
18 without reopening the case?
19 MR. MAGOR: I -- I would not actually
20 know, because I don't have access to the records,
21 the court docket or the CCS, for the case that was
22 brought by the de novo rule. The judgment that I
23 have in my possession that I received in the mail
24 was approximately $1100 to the plaintiff, the
25 remainder in -- went to his attorney, in the form

1 of interest and fees, reimbursements for court
2 costs, copies, things like that. So, of the
3 nearly $6,000 judgment, approximately 1100 to 1500
4 went to the plaintiff who had originally brought
5 the suit.
6 JUDGE BAKER: And this was a contract
7 dispute concerning a leased premises?
8 MR. MAGOR: Yes, a leased premises
9 that I never actually unlocked or stepped foot in.
10 JUDGE BAKER: Thank you very much.
11 MR. MAGOR: In addition to that, I
12 just wanted to mention that I've been in the -- in
13 Center Township several times. The same plaintiff
14 actually -- as one gentleman had referred to, the
15 pro supp hearing, they did not realize that they
16 were actually already garnishing my wages and
17 collecting money from me, so they had actually
18 scheduled a pro supp in Center Township.
19 And while I was there, not really knowing
20 why I was there, the -- I paid very close
21 attention to the other cases that were being heard
22 in the court that day, and I think that -- one
23 gentleman mentioned intimidating judicial
24 behavior.
25 I think what nobody has really mentioned

1 since I've been here, as I arrived late and I
2 apologize, is the intimidating attorney behavior
3 in the courts, the continual continuances, the --
4 one woman in Center Township had said that it
5 would take her two hours to get to the court, two
6 hours to get home, she was in a wheelchair, she --
7 unable to walk, and this was the third time that
8 she'd actually been in the courtroom, and this
9 would have been the third time that the plaintiff
10 actually continued the trial. So, this will be
11 four times that she actually has to travel from
12 her home to the court and back for nothing.
13 Another woman, single mother, family of
14 five or -- five children, single mother, I
15 listened to her being told by a debt collector
16 that she has no choice but to arrange a payment
17 plan with him. I know that this is -- the whole
18 reason that she came into the courtroom, the whole
19 reason we have the courts, is so that we can have
20 these cases heard by a judge.
21 And I remember in the article that was
22 featured on Presidents' Day, I don't recall what
23 the judge's name was who was featured in the
24 article, saying that in his court, he actually
25 does hear every single case, because of the

1 intimidating attorney behavior.
2 In addition to that, between the de novo
3 rule and other rules -- you know, not everyone has
4 access to the Internet, not everyone can come down
5 to the courthouse and get a flier. It would be
6 ideal to have an individual or some type of system
7 in place where defendants, particularly those who
8 are faced with seasoned attorneys in this,
9 quote/unquote, informal process, have the
10 opportunity to be informed fully of their rights.
11 So, I know, you know, for example, in
12 St. Joseph County, when you go to court over a
13 traffic ticket or any -- an infraction of any
14 level or severity, you have to sign saying that
15 you are aware of your rights. At no point
16 throughout this particular process was I ever
17 asked if I was aware of my rights as a defendant.
18 So, that's all I have to say.
19 JUDGE BAKER: Thank you very much.
20 MR. MAGOR: Thank you.
21 JUDGE BARTEAU: Thank you.
22 JUDGE BAKER: Thus far, my -- my law
23 clerk has indicated that these are the people that
24 indicated they wanted to make a statement, but I
25 think some of you may want to make a statement

1 though you didn't so indicate, so I'm going to ask
2 those of you that want to do so to just kind of
3 form a line over here, if you would, so that you
4 can be heard.
5 MR. GALLIHER: Thank you, Your Honor.
6 For the record my name is Jeffrey Galliher,
7 G a double l i h e r. I believe I did indicate I
8 wanted to make a statement, but maybe it wasn't --
9 my chicken scratch wasn't clear.
10 But at any rate, Your Honor, my name,
11 again, is Jeff Galliher. I'm a sole-practitioner
12 attorney in New Palestine, Indiana. A significant
13 portion of my practice is dedicated to
14 representing landlords in eviction proceedings,
15 which sometimes then result in a related
16 collection proceeding.
17 I practiced in Indiana for two years, more
18 or less, and prior to that, I had a busy
19 litigation practice in Las Vegas, Nevada. As a
20 result, I've appeared in front of courts from
21 small claims courts to the Federal Circuit Courts
22 of Appeal.
23 And I just wanted to relate my experience
24 with the judges, and I will tell you, I file in
25 Washington Township, Warren, Perry, Pike, Wayne,

1 Center, and I think that's it, and in two years
2 and probably 1800 eviction cases, I have yet to
3 encounter any conduct by any of the judges in
4 those courts which I deem to be even less than
5 professional.
6 I -- in fact, my experience in these courts
7 and the way these courts deal with pro se
8 litigants has been significantly different than in
9 almost any other court I've been in, in that prior
10 to practicing in the small claims courts of Marion
11 County, my experience with pro se litigants was
12 judges said, "I can't give you legal advice, you
13 have the right to get an attorney, I'm not your
14 attorney," and that was the extent of it.
15 And while I don't think what the judges do
16 here in Marion County is out of line, I think they
17 do -- are very cognizant of the rights of these
18 litigants, and again, in my -- in handling those
19 cases, Ms. -- I apologize -- Ms. Varney [sic], I
20 believe, indicated she didn't think it was fair
21 that there was this room dedicated to the
22 plaintiffs, and, you know, it's not a room
23 dedicated to the plaintiffs. It's a place where
24 the plaintiff's attorney and that pro se defendant
25 can go in there and discuss this business that

many times is very sensitive business, and it's sensitive business of the defendant.

JUDGE BAKER: Except that you don't want to discuss it in front of everybody else, but you would give me the fact that when a defendant doesn't even know that the judge -- is told the judge is not even there --

MR. GALLIHER: And I --

JUDGE BAKER: -- it's quite a bit different.

MR. GALLIHER: And Your Honor, I listed the courts that I practiced in, and I've never had that experience.

JUDGE BAKER: I understand.

MR. GALLIHER: So, I can't -- you know, I'm not going to -- I can't really talk about it. Yeah, I mean if they're holding court and the judge isn't there, I mean that's a problem. There's no doubt about that. I haven't had that experience.

JUDGE BAKER: Okay.

MR. GALLIHER: And I just wanted to let Your Honor know that -- I mean, you know, I try to be fair with people when I deal with them. I know they're not a lawyer and I am a lawyer and

1 we're in a lawsuit, and that's -- you know, it's
2 maybe not fair, but, you know, it's not, frankly,
3 my job to give them legal advice. I have duties
4 myself to my client, the one who's paying me to be
5 there.
6 That doesn't mean I take advantage of
7 people. I don't think lawyers should take
8 advantage of people, and again, it's been my
9 experience, as I overhear conversations and I see
10 my colleagues interact with these defendants, I
11 have -- and again, in that time frame I haven't
12 seen conduct by any of these attorneys that I
13 would deem to be unethical. Again, I think most
14 of us are just trying to do our best to get the
15 case done, get it through the process that it's
16 supposed to go through, and to get to really a
17 just result.
18 And, you know, when you're talking about
19 problems with defendants getting to court, you
20 know, I necessarily file in the townships where
21 the folks live because I'm filing real estate
22 cases. It's still, you know, 95 percent of my
23 cases the defendant doesn't show up for the
24 initial hearing or for any hearing after that.
25 So, the notion that if a bus ran to these

townships you'd have a significantly higher amount of defendants show up, I don't know that that's necessarily the case, based upon my experience in cases where I'm talking about people who are --

JUDGE BAKER: But you'll give me this: They certainly could, as opposed to can't.

MR. GALLIHER: Well, I think -- well, Your Honor, I think you're assuming that those people aren't there because they -- you know, the bus doesn't run.

JUDGE BAKER: I'm not assuming anything, but I know people -- it would be very difficult to go from Washington Township to Decatur Township if you did not have access to public transportation.

MR. GALLIHER: Potentially, but now you're talk -- if you're talking about the issue that Mr. Guy raised and if you're talking about consolidating --

JUDGE BAKER: We're not --

MR. GALLIHER: -- courts downtown --

JUDGE BAKER: We're not talking about that at all.

MR. GALLIHER: Oh, well then I don't need to talk about it. Thank you for your time.

(Laughter.)

JUDGE BAKER: Thank you.

MS. BRYSON: Hi. I'm Carolyn Bryson. I'm married to Don Bryson. I have just a --

JUDGE BAKER: Would you spell your -- oh, you did.

MS. BRYSON: B r y s o n.

JUDGE BAKER: Okay.

MS. BRYSON: A generic question: Who currently makes the decision which court is going to be with the venue? Who makes that decision?

JUDGE BAKER: The party initiating the action.

MS. BRYSON: The plaintiff?

JUDGE BAKER: Yes.

MS. BRYSON: They --

JUDGE BARTEAU: Except in landlord-tenant cases. That has to be in the township where the real state is located. But on any other kind of case, the person filing the action makes the decision where it goes.

MS. BRYSON: So, then it's quite easy for them to select a court that they think will be in their favor?

JUDGE BARTEAU: Well, yeah.

JUDGE BAKER: You could draw that conclusion.

MS. BRYSON: Right.

(Laughter.)

MS. BRYSON: And apparently it works pretty well, because the one attorney who talked about the many, many cases that are medical cases from St. Vincent, which is Washington Township, he files here in Pike Township. So, it seems to me -- I don't know that plain -- or the defendants are really at all aware that they could say, "No, I want it heard where the service occurred."

JUDGE BAKER: We are aware of the fact that the rights of the defendants and litigants in Small Claims Court need to be addressed. They have certain rights. Unfortunately they don't know them.

MS. BRYSON: That's correct. And it should be clearly written in a general -- at the fourth-grade level of reading.

JUDGE BAKER: Or even something that I could understand.

(Laughter.)

MS. BRYSON: Yeah, plain English at the fourth-grade level.

JUDGE BAKER: Thank you, ma'am.

MS. BRYSON: Or I guess possibly third these days.

The other thing: Has any thought been given to having a defendant advocate, who would be there not to provide legal counsel, but to reiterate the defendant's rights?

JUDGE BAKER: We have had the suggestion that maybe some of our budding lawyers from the law school might make themselves available so that they could undertake to try to help people if they had questions.

MS. BRYSON: But -- that's a good idea, or, you know, clerks, possibly.

JUDGE BAKER: Yeah.

MS. BRYSON: But I do think the -- when you look at the Defendants, they've got no clue, for the most part, unless they've been a repeater, what rights they do have.

JUDGE BAKER: Thank you.

MR. BRYSON: So --

JUDGE BAKER: I appreciate it.

JUDGE BARTEAU: Thank you.

JUDGE BAKER: Yes, ma'am.

MS. HILDEBRANDT: My name is Sue

Hildebrandt, H i l d e b r a n d t, and I'm a landlady in the Center Township area, so I'm in court a lot with a possession of real estate.

A couple of things that are going on down there, the judge down there has had a landlord training, landlord-tenant training.

JUDGE BARTEAU: What township did you say?

MS. HILDEBRANDT: Center Township.

JUDGE BARTEAU: Okay.

MS. HILDEBRANDT: Michelle Scott Smith --

JUDGE BAKER: Uh-huh.

MS. HILDEBRANDT: -- is the Judge. She did a landlord training. I did attend it. Of course, now I have more questions than before. I've looked at the paperwork for the different townships. Some of it is the same, a lot of it is different.

In Center Township, everyone goes before the judge. I don't know that I've ever seen -- well, I see people go and talk to an attorney, but they always come back, and it seems like everybody goes before the judge.

JUDGE BAKER: On landlord-tenant

matters.

MS. HILDEBRANDT: On landlord-tenant matters.

I think there needs to be consistency in the guidelines for emergency orders to evict. That's based upon the -- I was in a different court. I was able to observe what transacted, and in most courts, in most of the other courts, you don't get to see what's going on behind closed doors.

And I had the unfortunate or fortunate experience of being in on a different case where I was not the plaintiff or the defendant, but was there as -- to testify, which the defendants were never allowed to testify, and my partner almost went to jail for 30 days for contempt of court. Okay.

JUDGE BAKER: Well, the hearings are a lot shorter. You can't just hear from one side.

MS. HILDEBRANDT: Exactly. And we were prepared. We had a stack of papers and, you know, all -- everything we needed.

Okay. I find certain things confusing. For instance, we can work out a deal with our tenants and continue to take rent payments if we

go before the court and tell them that's what we're doing, but if we go before the court and tell them we took rent after we filed for the eviction, we can't do that. Okay. That doesn't make sense.

And I think maybe interviewing some of the bailiffs would be an interesting insight as to what actually happens.

JUDGE BAKER: Well, I'll tell you and the rest of the members of the public that are here gathered, we have some of our staff who have been going to the various townships and witnessing the proceedings or lack thereof.

MS. HILDEBRANDT: Okay. Thank you.

JUDGE BAKER: Thank you, ma'am.

JUDGE BARTEAU: Thank you.

MS. ANDREWS: Evening. My name's Julie Andrews, and I'm an attorney here in town. I'm also the current President of the Indiana Creditors Bar Association, and I would just ask that the Board keep in mind -- there's been a lot of discussion of forum shopping and filing litigation in various townships.

What the Court needs to keep in mind is one of the reasons why the Cook County redistricting

1 project fell apart was you had a lot of
2 commercial -- excuse me -- a lot of plaintiff's
3 counsel filing in the various townships, and what
4 was happening is, for example, Debtor 1 lives
5 across the street from Township 2, and so what's
6 happening is there's a lot of Fair Debt Collection
7 Practices Act violations because a debtor lived on
8 the other side of the street.
9 So, you can see the complications for
10 plaintiff's attorneys trying to do their
11 diligence, filing in the correct township, and
12 then being sued in Federal District Court for
13 suing in the wrong township when they lived on the
14 wrong side of the street.
15 So, I would ask that you keep that in mind,
16 in addition to the comment that was made with law
17 students giving advice at court. I hope they have
18 malpractice insurance, because I would hate to
19 have a defendant lose out on their rights because
20 they got bad advice.
21 JUDGE BAKER: Ms. Andrews, may I
22 assume that your association would stand ready to
23 work with the small claims judges in trying to
24 come up with maybe better information --
25 MS. ANDREWS: Absolutely.

JUDGE BAKER: -- that could be disseminated to people that find themselves in the courts?

MS. ANDREWS: I think the key for this subcommittee is going to be putting together a uniformity for all of the township courts, whether it's uniformity in forums, procedures, when the judges are there, in addition to educating litigants. I think that is vitally important. Whether you restate the notice of claims, modify the summons, you know, perhaps if they go to court, there's a TV screen right there that gives -- while defendants are waiting to have their hearing called by the judge, they can hear about what their rights are.

JUDGE BAKER: Good idea. Thank you, ma'am.

MR. LAMERE: Judge, my name is Phillip LaMere, last name is L a capital m e r e. I'm one of the managing partners of the law firm of Bowman & Heintz. We're one of the largest consumer collection firms in -- actually in the Midwest, and I've been doing consumer collection work for 32 years, the last 26 of which have been here in Marion County at our office. I manage a

1 branch office here.
2 I've heard some comments today -- or this
3 evening concerning concepts like forum shopping,
4 which I think is a gross misnomer and kind of a
5 red herring that people throw around. The notion
6 seems to suggest that something's being purchased
7 or bought by shopping.
8 To think that a consumer collection firm or
9 plaintiff's firm would take the time, when they're
10 filing hundreds and hundreds of lawsuits, to
11 figure out where a debtor lives in one township
12 within Marion County so that we can somehow put
13 them to some onerous chore to get to court that
14 will afford us some sort of a benefit is
15 ridiculous.
16 Law firms are in the business of making
17 money and staying profitable. To ensure better
18 efficiencies, they will try to put as many
19 lawsuits as they can in one judicial district or
20 county. We're complying -- most of the collection
21 attorneys in Marion County are complying with the
22 law by suing people in the county, in a small
23 claims district, which is county-wide. As long as
24 a person lives in Marion County, they work in
25 Marion County, or the contract was executed in

1 Marion County, they can sue them in any one of the
2 township courts.
3 Our firm has chosen Center Township because
4 it's centrally located, and no one that we sue in
5 Marion County is more than one township away from
6 where the court should be. We try not to put
7 people to the chore of making an onerous travel to
8 court, because we want people to show up. We want
9 them to be there so we can talk to them to try to
10 collect the account. So, I really take offense to
11 this idea of forum shopping, and that term that
12 was used in that newspaper article, I think, is,
13 like I said, a misnomer.
14 The idea that -- there's been some
15 discussion about Cook County, Illinois and what
16 they did. Cook County, Illinois, obviously a much
17 bigger county than Marion County, has always
18 traditionally been divided into six judicial
19 districts.
20 When the Fair Debt Collection Practices Act
21 exemption to attorneys was removed, there was
22 litigation after a while that was initiated in
23 Cook County to say that someone who hasn't sued an
24 individual in the exact judicial district within
25 Cook County where he lived was violating the Fair

1 Debt Collection Practices Act. And so, for a time
2 there was concern that people had to be sued
3 exactly in the judicial district where they lived,
4 which would be comparable here in Marion County to
5 being sued in the dist -- the township where you
6 lived.
7 That case ground through the Court of
8 Appeals cases in Illinois, and eventually the
9 Court of Appeals came down and said that no, that
10 isn't going to be -- that's not the case. It's
11 not a violation of fair debt to sue somebody in a
12 judicial district that's different from where they
13 live.
14 But during that time when that case was
15 rolling through the courts or churning its way
16 through, all of the plaintiff's attorneys in Cook
17 County had to start -- for fear of being held in
18 violation of fair debt, they had to start suing
19 everybody in the districts where they lived, and
20 it was a terrific hardship on people, on the
21 plaintiff's attorneys trying to figure out where
22 people lived, where the district lines were, that
23 type of thing.
24 So, I think there is some precedent in that
25 regard, and I would encourage this panel to maybe

check into the -- and look into the Cook County situation.

Lastly, just as kind of a general statement, my experience after 32 years of doing this is that this notion that people's rights are somehow being trampled by the small claims courts or the collection attorneys or collection agencies, whatever the case may be, is far less an idea or a concept where things are being -- rights are being trampled or somehow forfeited as it is -- I think people are forfeiting their rights through antipathy, ignorance, or just plain laziness.

The notices of claim that are served on people in most collection cases, especially here in Marion County, have just about every bit of information that a consumer should need in order to protect themselves in court, and I find the majority of people that come into court and complain that they don't know what their rights are or they didn't know they could request for a change of venue or they could get a change of judge or they could get discovery, all of that, I think, is more of a result of people not taking the time to read what's in front of them; okay?

1 And that's kind of my perception.
2 So, granted, there's always going to be, I
3 think, exceptions where some rights are being
4 maybe forfeited to some extent or there's some
5 abuse, and that's unfortunate, and I hope this
6 panel will take some of those -- you know, these
7 complaints that people are raising into
8 consideration.
9 But I still think that the small claims
10 system here in Marion County is a very
11 well-put-together system, it runs efficiently, and
12 I think the rights of people are served if they'll
13 take the time to read the papers that are served
14 on them.
15 JUDGE BAKER: Thank you, sir.
16 MR. LAMERE: Thank you.
17 JUDGE BAKER: Yes, sir.
18 MR. HASKELL: My name is Jim Haskell,
19 H a s k e l l. Every one of my court cases are in
20 Center Township. I started 13 years ago. I'm a
21 landlord. I started with Judge LaPaza, and now
22 have moved with Judge Michelle Smith Scott.
23 The one thing that I appreciate both of
24 those ladies have done professionally and
25 educationally in their court system is they say

everybody has to have their day in court. If I'm the plaintiff and I'm suing someone, it doesn't matter, you know, how often we have to continue it to get that person there. That's the one thing that I've admired from both those ladies is the fact that it is time -- you know, everybody has to have their day in court or we wouldn't be here or there wouldn't be a court system.

So, I do think -- Center Township has a vast majority of cases that's heard on a daily, weekly basis, and a lot of them are represented with attorneys, a lot of them are represented without, and for Michelle Smith Scott to take her time, and Judge LaPaza before her, and to take their time to say, "Here is a pamphlet. This is how you defend it."

You know, me as the plaintiff, I kind of cringed at that the first couple of times it happened to me, but Judge LaPaza being an English teacher and using the adage all of time, "Dot your I's and cross your T's," just goes a long way with everything, whether you're on the plaintiff or the defendant side.

And I just want to say that that court is very efficient, and I just really appreciate that

court's time and the clerk's times and all they go through to make that happen.

JUDGE BAKER: Thank you, sir.

MS. RANSBURG: Hi. My name is Kathryn Ransburg, R a n s b u r g, and I am an attorney here in Marion County. I -- about 85 percent of my practice is representing landlords in landlord-tenant cases and the collections associated with that, and I am in all nine townships, for the most part. I'm also in Boone County, Hamilton County, Hendricks County, Johnson County.

And I am in court every week. I've had the opportunity to see how the various courts function, and I just have some observations I'd like to share with you in terms of consistency and lack of consistency.

One of the biggest consistence -- inconsistencies I see, and I'm not saying that this is a good or a bad thing, but in some courts, if I meet with a tenant or a defendant in separate -- you know, in a private place, and we come to a settlement agreement, in some courts I fill out the judgment order, and then we take it to the clerks and they stamp it and sign it, and

1 it never gets previewed by a judge.
2 In other courts, if we reach an agreement,
3 we have to present is it to the judge first for
4 approval. I'm not going to say whether I think
5 that's a good idea or a bad idea, but that -- you
6 know, one way or the other, but I think that's
7 something that could probably be more consistent
8 among all of the courts.
9 I do know that there are certain courts
10 where if you are there on a possession hearing,
11 you don't get to see a judge. A clerk makes that
12 decision. If you're in a court, and I'm --
13 JUDGE BAKER: I'm sorry; are we
14 talking about Indiana, ma'am? In Indiana?
15 MS. RANSBURG: There's -- yeah.
16 There's a township where if I sue somebody for
17 possession and they want to challenge the
18 possession, they do not get to see the judge.
19 JUDGE BAKER: Do you feel some
20 professional obligation to object to that?
21 MS. RANSBURG: I'm not sure how to
22 proceed with that. I feel an obligation to
23 represent my client, and I have found myself --
24 JUDGE BAKER: Within the bounds --
25 MS. RANSBURG: -- telling --

JUDGE BAKER: Within the bounds of the law.

MS. RANSBURG: I have found myself telling tenants, "You have to right to see a judge. If you disagree with this possession, you have a right to see a judge," only to be told, "You can't see the judge. There's no judge here." So, that -- as an attorney who tries to be as ethical as attorneys can be --

(Laughter.)

JUDGE BAKER: I might take offense to that.

JUDGE BARTEAU: You want to restate that, start over again?

MR. BAIRD: I think you need to rewind, yeah. You're losing it.

MS. RANSBURG: It is something that I think needs to be addressed.

There was a suggestion that there be some kind of TV screen where they could see the people's rights, and I'm just imagining asking the people of Marion County to raise their taxes to pay for that.

What might be more cost effective would -- to be in the consultation rooms, which I strongly

1 agree we need to have, because it's not just
2 attorneys who meet with defendants, it's pro se
3 plaintiffs who also meet with defendants, and you
4 want to have -- and those need to be private
5 conversations.
6 So, they're not there just for the
7 attorneys, although we love them, but maybe just
8 having a big sign -- you know, poster board's
9 pretty cheap -- that says, "You have the right to
10 see a judge, you have the right to --" you know,
11 and just -- I mean that would be really cost
12 effective. You know, sometimes simpler is better.
13 Another inconsistency that I see is default
14 judgments. In some townships, a default judgment
15 is handled by the clerks, in other townships you
16 have to go in front of the judge. I love the ones
17 where I don't have to go in front of a judge,
18 because it saves me a tremendous amount of time,
19 but there is an inconsistency there.
20 Continuances, I've -- I think there needs
21 to be more consistency there. Some judges will
22 not continue possession hearings for more than a
23 week, even if both parties say, "We'd like to have
24 30 days to get this worked out." You know, even
25 if both parties are saying, "This is what we'd

like to do," the judges say no. Other judges, if both party -- you know, if the plaintiff says, "I'd like to have no more than a week on this continuance for possession," the judge grants 30 days. I'd like to see more consistency there.

Emergency orders, absolutely. I think the protection, what I'm running -- what I've run into is that the statute says, you know, there has to be a waste or threat of waste, and I've had more than one court staff tell me, "Well, do you have a police report?" Well, you don't always -- I mean waste or threat of waste does not always require calling the police.

JUDGE BAKER: I hope not.

MS. RANSBURG: But I have had judges -- I have had clerks tell me, "The judge will not grant you an emergency possession order without a police report." That needs to be -- some of them will, some of them won't.

In Center Township, for Heaven's sake, would you please get those ladies a bigger office?

(Laughter.)

MS. RANSBURG: I mean I look at this beautiful office in Pike Township, and I look at Washington Township, they've got a great office,

1 when I look at Decatur Township, and you've got
2 these poor ladies in Center Township that are in a
3 space the size of this corner, and they've got, I
4 don't know, you know, how many more times the
5 number of cases. Move them, please. I mean, you
6 know, it's -- I feel sorry for them. Somebody's
7 going to die down there.
8 JUDGE BARTEAU: No, there's not room
9 for that.
10 (Laughter.)
11 MS. RANSBURG: So -- yeah, don't die.
12 You can't, because there's no room. You couldn't
13 get a stretcher out there to remove the dead
14 bodies.
15 So, that's all I have to say.
16 JUDGE BAKER: Thank you, ma'am.
17 JUDGE BARTEAU: Thank you.
18 MR. CAVANAUGH: Evening. My name is
19 James Cavanaugh, with the law firm Gaston,
20 Cavanaugh & Giesel. The only -- I'm up here
21 just -- I'm not going to repeat most of what the
22 other attorneys have said. Just a couple of
23 points.
24 Where my practice is a little different. I
25 do insurance subrogation. I represent property

1 and casualty insurance companies. When you get
2 your car hit by an uninsured motorist, your
3 insurance company fixes your car, they send it to
4 me.
5 And the problem I think that's a little
6 different from the landlord situation is that I'm
7 dealing with uninsured motorists, and it's a very
8 mobile population, and the practical problem is if
9 we're going to talk about having to file somebody
10 in a particular township, where is that?
11 The people that I deal with move a lot, and
12 we get -- even with all of the benefits of the
13 insurance company, that we will request skip
14 traces on folks, and we'll have address after
15 address after address after address. You know, A,
16 I don't know what township that's in unless I'm
17 going to have somebody sit there and start
18 researching which one it all is.
19 But secondly, they may live in Pike
20 Township this month, they may live in Washington
21 Township six months from now, they may live in --
22 you know, out of the county six months after that.
23 We don't know, and so we take our best guess.
24 But -- but primarily we try to file in two or
25 three townships, just for the reason that's been

1 mentioned earlier, it's just efficiency.
2 I've got -- our cases all involve "Do you
3 have a dispute or don't you? Is it a rear end or
4 a left turn? Do we just need to sit down and work
5 something out? Or is there a fact dispute over
6 what happened? And in which case, fine, we'll go
7 in front of the judge, we'll let the judge decide
8 it."
9 The only other point I was going to make
10 is: As long as I've been practicing law, which
11 has been over 25 years, I remember the small
12 claims rules mentioned something about a small
13 claims litigants manual. I've never seen one, and
14 that would be a good thing, that folks would be
15 able to have a pamphlet, a sheet of paper that
16 they could get.
17 JUDGE BARTEAU: With fourth-grade
18 English, she said.
19 MR. CAVANAUGH: Okay. But anyway, the
20 litigants manual would not be a bad idea.
21 JUDGE BARTEAU: Thank you.
22 JUDGE BAKER: Is there anybody else
23 that has something that they want to bring to our
24 attention?
25 Ma'am, I think you've already spoken.

MS. VANDREY: Yes, I just wanted to --
JUDGE BAKER: Okay.
MS. VANDREY: -- try to clarify the main point.
JUDGE BAKER: Okay. Restate your name, but be very --
MS. VANDREY: Yeah, my name is --
JUDGE BAKER: -- very, very --
MS. VANDREY: -- Reita Vandrey --
JUDGE BAKER: -- very brief.
MS. VANDREY: -- V a n d r e y.
JUDGE BAKER: Okay. Very brief, ma'am.
MS. VANDREY: Yes, I understand. I'm -- I understand. I would request that if you come to court expecting to see a judge and you're not going to see a judge, you're going to see someone in a cubicle, that they will tell you that when you get there and not let you have to sit two hours.
JUDGE BAKER: Yeah.
MS. VANDREY: And if you've come to court for what's supposed to be the final seeing the judge, that -- and the case has -- supposed to be dropped, that the lawyer should know that, the

1 lawyer for the plaintiff, and that they should be
2 on top of it and know that, okay, you're there,
3 that you are not going to default, and that they
4 should let you know when you haven't waited two
5 hours to see them.
6 Thank you.
7 JUDGE BARTEAU: Thank you.
8 JUDGE BAKER: Ma'am?
9 MS. OPSAHL: Hi. My name is Kim
10 Opsahl, and the last name is spelled O p s a h l,
11 and I appreciate the opportunity today to share
12 information with you. I am one of the budding law
13 students that has been referenced off and on
14 throughout the comments this evening, and have
15 been working with a group of my fellow students,
16 along with Prof. Florence Royceman.
17 JUDGE BAKER: And I will share with
18 you, we have received your report.
19 MS. OPSAHL: Very good. And so, I
20 won't go into great detail, but I did want to
21 emphasize that many of the recommendations that
22 we've had have been referenced earlier, and so I
23 won't go over those, but I would draw particular
24 attention -- I think one of the areas where I
25 think the courts have been unfortunately

consistent is in not sharing information about parties' rights as it relates to their disability. We would highly recommend that the courts provide more information to folks about how they can request accommodations, if they're needed, as a result of their disability. I believe somebody earlier spoke about a woman who had to make arrangements three times to make it to court, and that there would be an easier process for folks in that regard.

So, thank you.

JUDGE BAKER: Thank you.

Is there anybody else?

Yes, sir.

JUDGE STEPHENS: I just wanted to put a couple of things into the record. I'm not going to make really a statement.

JUDGE BAKER: Okay.

JUDGE STEPHENS: Judge Doug Stephens. First thing, all of these people who said nice things about me --

JUDGE BAKER: You've got their names.

JUDGE STEPHENS: -- I didn't pay them.

(Laughter.)

JUDGE STEPHENS: And I think there was

1 some discussion that came up about the content of
2 the notice of claim forms, so I had one of my
3 staff members pull them, because it lists the --
4 half of the form is directed to rights.
5 JUDGE BAKER: Did you bring a
6 magnifying glass to read that?
7 (Laughter.)
8 JUDGE STEPHENS: The other thing is
9 just -- this is more for my staff than it is for
10 me. Those are some nice letters from folks who
11 have come into the court and gone through the
12 system. They go back before my tenure and
13 currently, and then this is from the State Court
14 Administration, which talks about when they came
15 out to help us try and reduce the volume of the
16 files that we have. What a wonderful job they're
17 doing in trying to get the files down. So, I --
18 JUDGE BAKER: Thank you.
19 JUDGE STEPHENS: -- like I said, it's
20 more for my staff than it is for me. And again, I
21 like all of those -- what those nice people said
22 about me, but I didn't pay any of them.
23 JUDGE BAKER: Thank you.
24 UNIDENTIFIED SPEAKER: Yes, you did.
25 JUDGE STEPHENS: I bought you lunch

about a year ago, so that doesn't count.

JUDGE BAKER: Yes, sir.

MR. BARTEAU: Hi. My name is Van Barteau. I'm a lawyer, but I don't practice in the Small Claims court, but if you want to hear some horror stories about Small Claims Court, we have to go back 30, 40 years in Marion County, when we had nonlawyers sitting as judges, and it has been a decided improvement.

What I want to talk about just briefly is I'm also on the Pike Township Advisory Board, or the Pike Township Board, and we're supposedly the legislative body for the Township, and when I first went on the Board a couple of years ago, one of the first things I did was look at the budgets.

And I looked at the small claims budget, and I asked Mr. Stephens, I said, "What are some of these things in your budget, the $60,000 for professional services? There's so much for this, I said, "there's so much for utilities, but it looks like it's the utilities for the whole building."

And he got into it and he explained what it was. He said he didn't have anything to do with the budget. The Trustee sets the budget, the

Trustee spends the money, and at the end of the year she files a final report with us, in which she lists all of her expenditures, but she doesn't break it down as to what's coming out of the township money and what's coming out of the small claims money. She lumps the money that's received from the Small Claims Court into the budget and then spends it as she sees fit.

Now, she says that that's what the State Board of Accounts says she can do, and it may be. But I think if we're going to start looking at the Small Claims Courts, we need to make judges more responsible, but we also need to give them more authority, authority over their own budgets, authority on how it's spent.

JUDGE BAKER: You would concede that even if you had a process whereby the small claims judge would make a budgetary request, it still would go to the Board?

MR. BARTEAU: Yeah, but we don't have that.

JUDGE BAKER: But you could.

MR. BARTEAU: Well, yes and no.

JUDGE BAKER: Well, I'm looking for yes.

(Laughter.)

MR. BARTEAU: Well, you're not going to get it. To a great extent -- not to a great extent. I'm speaking just from my experience. The Trustee also controls the Board.

JUDGE BAKER: Well, I thought the voters selected the --

MR. BARTEAU: The Trustee controls the Board in many of the townships.

JUDGE BAKER: Okay. Thank you, sir.

MR. BARTEAU: Yes, sir.

JUDGE BAKER: Well, this has been, as it was a week ago, very enlightening for us. We're going to have one more public hearing, and that will be in Judge Rosenberg's courtroom in the Circuit Court of Marion County, in the City-County Building, and that's scheduled for next Wednesday at 6:00 o'clock.

I caution you not to think that we have an agenda. We don't know what we're going to even recommend, if anything. The process here when we're done gathering information is that we have been asked by the Supreme Court that if we think that there should be some rule changes, that we make recommendations to the Supreme Court Rules

1 Committee, so that they in turn could make
2 recommendations to the Supreme Court.
3 If we need to make recommendations about
4 practices, we're going to work directly with the
5 small claims judges, who have been meeting
6 periodically with the Circuit Court Judge, Judge
7 Rosenberg, in order to come up with better
8 practices to better serve the public, and I think
9 we're going to see the fruits of their labors
10 shortly.
11 If we think that there should be some
12 changes with the governance structure or statutes,
13 we are going to make recommendations to our
14 General Assembly, but we can't know what to do if
15 we don't have the wonderful input that we had from
16 all of you here this evening.
17 Some of you have given us your e-mail
18 address or your contact information, and it may
19 well be that one of us or a staff member would
20 follow up and contact you about the information
21 that you shared with us this evening, and if you
22 would be willing to continue the dialogue, we'll
23 be enhanced by your information.
24 We also want to thank again Judge Stevens
25 and Pike Township Board and the Trustee for making

1 this facility available to us.
2 JUDGE BARTEAU: Don't forget the paper
3 with the --
4 JUDGE BAKER: Yes.
5 We have in the back a piece of paper for
6 those of you that would like to send information
7 to us, with our contact information, and Tim here
8 will be in the back of the room to provide that to
9 you. Should you want to send us a note or send us
10 an e-mail, he will give you that contact
11 information.
12 And with that, Doug, thank you very much.
13 You're very much appreciated.
14 And thank all of you for being here and
15 being so gracious.
16 (Applause.)
17 - - -
18 Thereupon, the proceedings of February 29, 2012 were concluded at 7:31 o'clock p.m.
19 - - -
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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Wednesday, February 29, 2012 in this matter and transcribed by me.

Lindy L. Meyer Jr.

Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires October 27, 2016.

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BEFORE THE INDIANA SUPREME COURT

- - -

CENTER TOWNSHIP

SMALL CLAIMS HEARING

ORIGINAL

- - -

PROCEEDINGS

in the above-captioned matter, before Indiana Court of Appeals Judge John G. Baker, taken before me, Lindy L. Meyer, Jr., a Notary Public in and for the State of Indiana, County of Shelby, at the Marion County Circuit Court, City-County Building, 200 East Washington Street, Room W506, Indianapolis, Indiana, on Wednesday, March 7, 2012 at 6:00 o'clock p.m.

- - -

William F. Daniels, RPR/CP CM d/b/a
ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel, Indiana 46032
(317) 848-0088

1 APPEARANCES:

2 ON BEHALF OF THE INDIANA COURT OF APPEALS:
Hon. John G. Baker
3 Tim Nowacki

4 ON BEHALF OF DIVISION OF STATE COURT
ADMINISTRATION:
5 Elizabeth Daulton
Yolanda Collins
6

ON BEHALF OF MARION COUNTY CIRCUIT COURT:
7 Louis F. Rosenberg

8 SPEAKERS PRESENT:
Marvin Phipps
9 Alison Becker
Shannon Lott
10 Patricia Murry
Kassi Green
11 Adam Mueller
Roderick Bohannan
12 Moni Ayangade
Richard Gonon
13 Hal Thurston
Janet McIntyre
14 Jesse Clements
Joan Arnold
15 Tony Regucci

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6:00 o'clock p.m.
March 7, 2012

- - -

JUDGE BAKER: Good evening. My name is John Baker. I'm a Judge on the Indiana Court of Appeals, and I have been, along with my colleague, Betty Barteau, a retired Judge from the Indiana Court of Appeals, who's serving on our Court in a senior status, tasked to be -- to look into the Small Claims Courts of Marion County.

I appreciate everybody's attendance this evening. Unfortunately, Judge Barteau, for health reasons, was unable to attend, though she will be given a transcript of these proceedings so that she will be fully informed.

We have the services of a court reporter here this evening, so when I call your names to have you make your presentation, I'd ask that you approach the bench so that we can hear you and so that the court reporter can also hear you. And when you do identify yourself, if you would be so kind, please state your name and spell your last name.

I want to thank Judge Rosenberg for allowing us to use his facilities today, and we'd like to also recognize our appreciation for the

Judges in Perry Township and Pike Township, who have previously availed their facilities for our use.

The reason that you were asked to give us some -- a way of contacting you is, in many instances, we find out that we need to ask you some more questions, so it's not because we want to be secretive or anything. We just -- you might have said something that we might need to have more information about.

If you would keep your comments brief, it would be appreciated by those that stand behind you that are ready to make a comment, and I'd also ask that everybody remind themselves to turn off their cell phones.

Is it -- I can't get the first name, I'm going to guess. Is it Marion Phipps?

MR. PHIPPS: Pardon? Marvin?

JUDGE BAKER: Marvin Phipps.

MR. PHIPPS: Yes.

JUDGE BAKER: Yes. You don't have to get that close.

MR. PHIPPS: Oh, okay.

JUDGE BAKER: You're fine, just right there.

MR. PHIPPS: Okay.

JUDGE BAKER: Thank you.

MR. PHIPPS: Well, since I've never been down here before --

JUDGE BAKER: That's okay.

MR. PHIPPS: -- I didn't know what the procedures are.

JUDGE BAKER: Would you tell the court reporter your name, sir?

MR. PHIPPS: My name is Marvin Phipps, P h i p p s.

JUDGE BAKER: Thank you, sir. Go ahead.

MR. PHIPPS: So, this is a case that started in December of 2009. My wife and I had went down to -- am I allowed to say who the party is?

JUDGE BAKER: Yeah, sure.

MR. PHIPPS: Oh, okay. Went down to Zenders to cosign a rental agreement, a lease agreement, for a three-month period of time. Now, at that time when we were in Zenders, I made it very clear that we was only going to do it for three months and about months only, and -- because I was going to retire in the near future, and I

1 didn't want any other commitments. And they said
2 that was no problem at all.
3 So, when the end of the three-month
4 agreement was up, our stepson got a letter, which
5 I have a copy of, saying his lease was going to be
6 renewed. It's time for his lease to be renewed on
7 2-28-2010. So, therefore -- we had already
8 indicated we were not going to cosign another
9 lease, so it was upon himself to take care of his
10 own obligations.
11 Then we were notified -- actually we were
12 notified that there was a court hearing. I have
13 the paperwork here, and I think the Court has a
14 copy as well, and I'll make it brief. There was a
15 court hearing that was scheduled, and we were
16 given the paperwork five days after the court had
17 already occurred.
18 JUDGE BAKER: How did you get the
19 paperwork.
20 MS. PHIPPS: Mail.
21 MR. PHIPPS: Mail.
22 JUDGE BAKER: Okay.
23 MR. PHIPPS: Okay. So, well, it's --
24 obviously we were shocked.
25 JUDGE BAKER: Yeah, I can imagine.

MR. PHIPPS: So, we went down and we found out what the -- the judgment was for something like $1500 or whatever. It's in the paperwork. And so, we went down to Small Claims Court and we requested -- I can't remember all of the specifics, but we were trying to find what our obligation was, if any.

So, we won't down to Small Claims Court to see what was in the court file, because according to the Zenders, we had signed a lease agreement beyond a three-month period of time. We were obligated. We were the lessors; okay? So, my contention was, it always has been, number one, we never got a copy of the lease to start with. Number two, we weren't notified of this court date.

JUDGE BAKER: Let me interrupt and ask questions I think that are going to get us to the conclusion here. Was a judgment entered against you and your wife?

MR. PHIPPS: Yes.

JUDGE BAKER: And did you get that judgment set aside?

MR. PHIPPS: When you say "set aside" --

JUDGE BAKER: Vacated.

MR. PHIPPS: Vacated? No.

JUDGE BAKER: Did you try?

MR. PHIPPS: I can't remember specifically. I think we went down and asked for a set-aside.

JUDGE BAKER: Uh-huh. Where was this?

MR. PHIPPS: When?

JUDGE BAKER: Where?

MR. PHIPPS: Small Claims Court, Marion County.

JUDGE BAKER: Which one? And can I see your paper -- some of your paperwork, if I may?

MR. PHIPPS: You can see it all.

JUDGE BAKER: Oh.

MR. PHIPPS: Right here.

(Laughter.)

JUDGE BAKER: Okay. That helps me. All right. And so, you never filed a petition to have this set aside?

MR. PHIPPS: I -- I can't believe --

JUDGE BAKER: Well, we have that paperwork, because you sent that --

MR. PHIPPS: Yeah.

JUDGE BAKER: -- to the Task Force. That's correct?

MR. PHIPPS: Yes.

JUDGE BAKER: Okay.

MR. PHIPPS: So, to make a long -- we've been to the Small Claims Court three times now.

JUDGE BAKER: Uh-huh.

MR. PHIPPS: Okay. And --

JUDGE BAKER: Have you ever talked to the Judge about the fact that you never got service processed?

MR. PHIPPS: Yes, yes, I did.

JUDGE BAKER: Uh-huh.

MR. PHIPPS: She was very upset.

JUDGE BAKER: Upset about what?

MR. PHIPPS: That we didn't get the paperwork.

JUDGE BAKER: Well, she should be.

MR. PHIPPS: Well, that's her job.

JUDGE BAKER: Yeah.

MR. PHIPPS: So -- but the fact remains that we did just sign for a three-month lease.

JUDGE BAKER: I understand that --

MR. PHIPPS: Okay.

JUDGE BAKER: -- but that's a --

MR. PHIPPS: However, Zenders --

JUDGE BAKER: Okay. But that's something I can't take care of here, but what I'm looking into is the way the Small Claims Courts function --

MR. PHIPPS: Uh-huh.

JUDGE BAKER: -- not the quality of their decisions necessarily, or even the correctness of their decisions, and so that's a different issue, but I'm very concerned that you have been to Small Claims Court three times, and the first time was after --

MR. PHIPPS: It was five days after.

JUDGE BAKER: Five days after.

MR. PHIPPS: Five days after the fact.

JUDGE BAKER: All right. Thank you very much, Mr. Phipps. I'm going to look into it.

MR. PHIPPS: Okay. Can I continue?

JUDGE BAKER: Well, what else do you have to tell me?

MR. PHIPPS: Well, the paper, the Indianapolis Star, asked for suggestions --

JUDGE BAKER: Yes.

MR. PHIPPS: -- and input.

JUDGE BAKER: Do you have a suggestion?

MR. PHIPPS: Yes. The biggest factor that I have is the attorney for Zenders, he acted like the courtroom was his own business, you know? He sits in front of the judge's chair, podium, if you will. He conducts his business right out in the open, with a multitude of defendants, and extremely intimidating.

I don't intimidate easy; okay? And a lot of these people are young people, never been -- probably never had an attorney, and when he -- when we met with him -- and that's what kind of gets me. He meets you right there in the courtroom, in the Judge's office, if you will, and he told us that he was going to get every cent. Since I'm retired, I explained to him that my income is derived from Social Security and retirement benefits.

JUDGE BAKER: Okay. I'm going to look into it.

MR. PHIPPS: Okay.

JUDGE BAKER: Thank you very much. I think your suggestion about whether or not the

1 attorneys control the courtroom is one that's been
2 made before.
3 Thank you.
4 MR. PHIPPS: All right. Thank you,
5 sir.
6 JUDGE BAKER: Thank you.
7 Alison Becker?
8 MS. BECKER: My name is Alison Becker,
9 A l i s o n, B e c k e r. I am one of the
10 students at the Robert H. McKinney School of Law
11 here in Indianapolis. I know that several other
12 students have participated in your hearings, and
13 we'd like to thank you for holding them and thank
14 you for hearing us out.
15 A couple of the issues that have previously
16 been brought up are about disability issues and
17 access to the courtroom, and also making sure that
18 the forums are consistent, not only throughout
19 Marion County, but ultimately throughout the
20 state.
21 But what I wanted to talk to you about
22 tonight is the dependence of the covenants in the
23 lease, the dependent of the covenant to pay rent
24 as well as the habitability of the premises, and
25 how the Court should consider those two things

1 concurrently, which would allow for us to improve
2 housing as well as judicial efficiency.
3 In 2002, the General Assembly passed a law
4 requiring that landlords maintain a safe, clean
5 and habitable premises for tenants, and that's
6 Indiana Code 32-31-8-5. Based on this law, then
7 it follows that in jurisdictions throughout the
8 United States, the residential lease covenants are
9 dependent both then for habitability as well as to
10 pay rent.
11 Right now it's been our understanding that
12 most Small Claims Courts in Marion County as well
13 as throughout the state don't necessarily consider
14 those two things at the same time, and what that
15 means is that tenants may not be paying rent
16 because they don't have a habitable premises, but
17 they are not able to bring that up as part of the
18 hearing and it's left to the damages hearing.
19 By considering both issues at the same
20 time, we will promote safer, better housing stock
21 for our tenants in Indiana, and we will also allow
22 justice to be served according to the way the
23 General Assembly has passed it. So, we would
24 encourage you, as you look at a variety of issues
25 related to landlord-tenant issues in Small Claims

Court, that you consider that as well.

JUDGE BAKER: Thank you, ma'am.

Shannon Lott?

MS. LOTT: Good evening.

JUDGE BAKER: Good evening.

MS. LOTT: My name is Shannon Lott, and I rented a condo from a private owner; okay? Signed a lease December 3rd, 2009, it was supposed to go through December 3rd of 2010, and during the time I stayed on the property, I contacted the owner about repairs that should have been done. They weren't done. I never received any receipts for the rent paid; okay?

Hoping that she would terminate the lease early, she did, and I was more than happy to oblige with her request. We agreed mutually to terminate the lease, and I have copies, but I didn't bring any copies of my paperwork today.

JUDGE BAKER: That's all right.

MS. LOTT: Okay. We agreed that I would come out of the property September 4th of 2011. I requested another day to clean the carpets, you know, make sure things were done, and she also agreed. She didn't say anything about extra moneys or any additional fees or anything

that were owed. In fact, when she e-mailed me about terminating the lease, I have an e-mail that she stated, you know, I can terminate the lease, no penalties or fees; okay?

We did a walk-through of the property. She agreed everything was fine. I then asked her, "So, when will I get my deposit back?" My deposit was a thousand dollars. She said. "I will get that back to you, you know, as soon as I speak with my husband." Now, he wasn't on the lease. He's nowhere on the property deed, title or anything like that.

So, a couple of weeks passed and I didn't receive my deposit back. So, I'm e-mailing her, texting her, you know, "Did you get my information? Am I going to get my deposit back?" And I get a threatening e-mail from her husband, "You owe me another month's rent plus all of the damages that you made to my property." And I'm like, "We did a walk-through and there was nothing mentioned."

And we -- I consulted with an attorney before I terminated the lease, took the pictures as I as supposed to, sent her my address, you know, everything. When I got to court, I was not

allowed to speak hardly. The --

JUDGE BAKER: Where did you go to court?

MS. LOTT: Warren -- or excuse me -- Wayne Township.

JUDGE BAKER: Okay.

MS. LOTT: I had copies of all of the e-mails, the texts that I sent discussing termination of the lease. The copies of the pictures were given to the Judge.

The husband of the property owner, he walked up several time on me as if he was going to hit me. The bailiff had to actually step between us, because he was so abrasive and his language was so abusive. And so, I was very upset about that.

So, at that point, you know, I said, you know, "I have my pictures, I have the lease, I have all of the documentation saying that I want my deposit back." You know, when she sent the letter from the owner of the property saying what fees you have, there was no documentation supporting her repairs, she had no pictures, she had no documents, no nothing to support any kind of fixes that were going to be done.

Okay. But I have pictures showing -- and they were negative, of when I left everything in the house. Yet the judge ruled that I owed a total month's rent and all of the damages that they had in this letter. They had no supporting documentation, whereas I had everything to support that I should have gotten my deposit back.

So, my -- another issue that I have with this process is when I spoke with the court, and I went on-line, I went to the site. There's no really detailed information as far as service of process, as I've heard mentioned here. There's no really detailed information as to how this works if something doesn't -- if you don't understand, you know, what's going on as far as your case goes.

I'm a paralegal, so I know all of what, you know, should be done, and as far as the service, we weren't told if there was proper service on them or not. We weren't told we had to refile, you know, all of this, and I said, you know, "we -- we requested all of this information when we filed initially." I said, "I don't see any of this here, and I understand the process, but you didn't tell me all of this."

1 So, we had to refile, wait another six
2 weeks before that, before we can get another
3 hearing.
4 JUDGE BAKER: And that's yet to
5 happen?
6 MS. LOTT: Well, no, we -- that was
7 actually -- service wasn't completed initially, so
8 we weren't able to actually hear it the first
9 time. When we finally did, then we went to court,
10 and the judgment, of course, was the 1500 against
11 me, only this is money that I feel I shouldn't
12 have had to -- I called the court and I said, "Why
13 weren't we advised that service wasn't completed
14 on these individuals?" They had no answer for me.
15 I requested a supervisor. The supervisor didn't
16 have an answer for me either.
17 So, my issue is that there should be more
18 detail on-line, there should be pamphlets or some
19 kind of booklet or something given to the
20 plaintiff filing, which I was, as far as if
21 something isn't completed, you know, how can I get
22 my answer? You know, can I come down? Is there
23 someone I can speak with? Is there someone that
24 knows what's going on? Because the person that
25 completed my paperwork, the supervisor, once I

spoke with her, she admitted she did something wrong, but they didn't right the wrong, so --

JUDGE BAKER: Thank you, Ms. Lott.

MS. LOTT: Uh-huh.

JUDGE BAKER: Pat Murry; is that right?

MS. MURRY: Good evening. My name is Patricia Murry, M u r r y.

It seems that I heard somebody ask the question if they thought the Small Claims Court should be merged with the regular courts, and I've been in and out of the regular courts lately, and they seem to be pretty jammed, and we're having quite a bit of, it look like to me, assembly-line justice, and my answer to that would just simply be no, that the courts will remain as small claim courts for us, the small people that can just come and go and get our business taken care of.

About two years ago, almost two years ago, my daughter got a ticket at school for having tobacco on the property, and they wrote her a ticket, and I have been going down to the Small Claims Court at Warren Township periodically, just to find out if there is a ticket there, and I have not found one. It's almost two years, and I was

1 told it could take up to two years to file their
2 complaint, which is beyond me. I can't understand
3 that.
4 But it would save me some time, and would
5 have saved me some time, had there been some
6 service people there to answer the phone. The
7 phone would either ring, ring, ring, ring and no
8 answer, or it would be off the hook, beep, beep,
9 beep, beep and no answer. And when somebody
10 finally answered the phone, it took them forever
11 to get back to you.
12 So, I don't know if the ticket has been
13 filed. My daughter will be turning 18 in April,
14 graduating from high school. I don't know if
15 that's going to be on her record any place. I
16 don't know if I am responsible for her for when
17 she got the ticket when she was 17 -- or 16. So,
18 I don't have a clue as to how this process is
19 working at this Small Claims Court.
20 So, I think if we would hire some more
21 service people -- and as she was talking about
22 people being able to go on-line, that's fine for
23 people that have computers, and that's fine for
24 people that know how to use computers, but it look
25 like more and more of us is ended up in the Small

Claims Court, and we really do need some service people to answer the phones and be able to give us the information that we need, so we don't have to go down and clog the halls, getting a number, standing in line, waiting for somebody to tell us, "We don't see you in the system."

So, I live at 30th and Fall Creek, and I have to go all of the way down to 10th and Franklin, so it's really an inconvenience. So, if there is something that can be done in the Small Claims Court to keep the Small Claims Court open and functioning properly, it would be good.

Thank you.

JUDGE BAKER: Thank you, ma'am.

Kassi Green?

MS. GREEN: Hello. Kassi Green, K a s s i, G r e e n. I'm with Indiana Legal Services. I work primarily in the Small Claims Courts protecting clients from evictions in landlord-tenant issues, and I just wanted to talk about some of the issues that I've seen.

There's been a lot of discussion about whether or not people have an opportunity to see the judge, and you had mentioned -- someone had mentioned asking for the judge. Something that I

have seen in a few of the Small Claims Courts is a bailiff calling names and directing people to the plaintiff's attorney, which concerns me, because it appears that these people are required to speak to the plaintiff's attorney.

A couple of suggestions for that is a sign. This was recommended by a plaintiff's attorney last week, indicating that people have a right to see the judge. They aren't required to speak with the plaintiff's attorney, and they aren't required to make agreements with the plaintiff's attorney.

Another suggestion would be an announcement by the bailiff after court has begun about speaking with the plaintiff's attorney and the right to see a judge.

Web site was mentioned. I think it would be great if we could have a more centralized Web site that is providing all of the forms, and if all of the townships could get onto mycase.in.gov, that's the free Web site for the CSS -- or CCS, it would make it easier for attorneys and also for people who are wanting to find out dates of their hearings. It would also hopefully cut back on telephone calls for the court.

One of the other things that I have seen in

court is some of the staff court -- or court staff and bailiffs being rather abrasive to the pro se litigants, and I think that a lot of people that come into the Small Claims Courts are already frightened or they don't know exactly what's going on, and then having a bailiff or court staff being rude to them just doesn't make it any better, and I think that justice works better if we're able to be courteous to one another.

Finally, we're having an issue at Indiana Legal Services with getting our fee waivers granted. There's a statute that allows us to file a couple of papers that automatically the fee waiver is granted. A problem that I'm having is that those aren't being granted in Small Claims Courts, and so when I go to file, for instance, if a client has been locked out and I need to get a case filed immediately, a couple of days later, you know, I get a call -- I'm trying to follow it up and I get a call that this isn't the proper form for a fee waiver.

I provide the statute, and then before I know it, it's been five days and my client hasn't been able to get into their apartment, or I haven't been able to file an appeal, and that's

1 really delaying the justice for my clients.
2 And that's all.
3 JUDGE BAKER: Thank you, ma'am.
4 MS. GREEN: Thank you.
5 JUDGE BAKER: Adam Mueller?
6 MR. MUELLER: Thank you, Judge.
7 Mueller, M u e l l e r, first name Adam. Judge,
8 I'm also an attorney at Indiana Legal Services,
9 and I wanted to follow up on Kassi's comments.
10 One of the things I think that we have
11 maybe the biggest problem with, with the small
12 claims system, and I don't think that this is
13 necessarily particular to Marion County, but
14 something that we would see in all 92 counties,
15 but the great thing about Marion County is that it
16 has the biggest volume of people that actually
17 come through, and so there's really big room for
18 impact.
19 But the problem is that when you have a
20 situation where one side is consistently
21 represented by attorneys and the other side is
22 not, and oftentimes in the landlord-tenant
23 situations or in the collections cases, then some
24 of the issues are perception of well, does this
25 person work for court staff or do they not?

No one's necessarily -- it's not that anybody is culpable, but the problem is that the other side just doesn't know and doesn't understand, and the reason I'm actually talking tonight is I had a suggestion, something that -- I went to law school down in Bloomington -- something that we put together several years ago, which was the tenants assistance project, and are you familiar with that at all?

JUDGE BAKER: I am.

MR. MUELLER: Okay.

JUDGE BAKER: I used to be a judge in Bloomington.

MR. MUELLER: Okay. Then obviously you know, and I think that one of the things that was so great about that is that even if we weren't able to represent everybody, we were able to talk to a lot of people and at least kind of get a sense of whether or not there are some legitimate defenses or help people negotiate with landlords, and I think it was a pretty effective system.

The other great thing is it also helps the law students to learn, and as you can see, there's already law students that are really interested in these issues.

We've talked about doing this in Marion County, and in the past we've approached folks. The problem is that people have been maybe reticent towards trying it, those sorts of things, and this kind of a program does not work without court -- without the court's acceptance. It doesn't work for us to be there or even try something like this if the court isn't open to it or would invite us.

So, as we kind of move through this process, if this is something that -- and if, Judge, you're familiar with it, it would really help -- if that's something that the Judges would be open to, we would definitely like to talk about it and talk about whether or not this is something that we can talk to the law school about, about putting something in place.

And for those of you, I guess, who aren't familiar with the Tenants Assistance Project, I had a bunch of law students, under the supervision -- they were all certificated legal interns -- under the supervision of an attorney from Indiana Legal Services, who would be in court to listen, to observe, to talk to plaintiffs and defendants, and it was really kind of a cool

1 process.
2 So, Judge, my contact information is there.
3 If this is something anybody's interested in, we
4 would definitely like to talk about it.
5 JUDGE BAKER: Thank you.
6 MR. MUELLER: Thank you.
7 JUDGE BAKER: Roderick Bonahan?
8 MR. BOHANNAN: Bohannan.
9 JUDGE BAKER: Bohannan; I'm sorry. I
10 couldn't read your handwriting. Forgive me.
11 MR. BOHANNAN: Evening, Judge.
12 JUDGE BAKER: Good evening.
13 MR. BOHANNAN: My name is Roderick
14 Bohannan, R o d e r i c k, Bohannan,
15 B o h a n n a n. I represent the Greater
16 Indianapolis Branch of NAACP. I am the
17 Chairperson of the Legal Redress Committee.
18 I want to start by saying this is the 45th
19 anniversary of the Criminal Report. For those
20 over 45 or 50 will remember that during 1967, all
21 over the city, all over the country, Philadelphia,
22 New York, Detroit, there were major riots. One of
23 the issues with the Criminal Report was that
24 people didn't feel the courts was accessible to
25 them, they didn't feel there was justice, they

1 didn't understand the process.
2 I'm not arguing that that's what happened
3 in Indianapolis, but you here are trying to make
4 determinations as to how we make sure that our
5 citizens in Marion County feel that the courts are
6 accessible, that there is justice, and that they
7 have a say-so in terms of the outcome of their
8 case.
9 I have a number of issues I want to raise.
10 I know you heard about venue, and people discussed
11 it at the last two hearings, but I would raise
12 that we need to change the venue statute for two
13 things: One, local. One of the things we've seen
14 at the NAACP, as a practicing attorney, is forum
15 shopping, specifically for many people who are
16 charged with -- from the Health and Hospital
17 Corporation -- with debt from the hospitals.
18 They get sued in Decatur. They get sued in
19 Franklin. They live in Center Township. They
20 don't have access to cars. They can't get there.
21 They get defaulted. And they get angry, because
22 they may have some very legitimate claims about
23 their bill. But because of forum shopping by the
24 plaintiff attorneys, there really isn't a way for
25 them to raise it.

1 So, we need to look seriously about whether
2 or not, if the debt is incurred in one ZIP Code or
3 part of the city, should plaintiff attorneys be
4 allowed to shop and file their complaints
5 someplace totally different?
6 We would ask you to look at out-of-state
7 complaints. What is interesting is that we have a
8 lot attorn -- a lot of clients who come to our
9 office -- trucking schools are good for that.
10 They put in their contract venue -- their
11 preferred venues here in Marion County. But often
12 the defendant has no concept of Indiana at all.
13 The trucking schools with training courses
14 in Missouri, Tennessee, Mississippi, they get sued
15 in Marion County, and what happens? They get
16 defaulted. And by the time we get it, it's too
17 late. And so, we need to look at the question in
18 terms of that if defendants have no contact in
19 Indiana, even though the contract may call for
20 preferred venue in Indiana, should they be allowed
21 to file in Small Claims Court, or even in courts
22 in Indiana period, but that's a different issue.
23 JUDGE BAKER: I think we have a rule
24 about that, quite frankly.
25 MR. BOHANNAN: Well, but

1 unfortunately, by the time those defendants called
2 us, it may be past a year to appeal, and I think
3 the question to the judges is to look at that.
4 The reality is the judges get the complaint once
5 it's filed, and if the defendant defaulted, it
6 never gets raised.
7 And so, the question becomes at the front
8 end, looking at the venue issue, whether or not
9 the plaintiff's attorney, when they file, should
10 know that if the defendant has no contact in
11 Indiana, doesn't live here, they should be
12 permitted to do so.
13 Flexibility. This comes in terms of where
14 the courts are located. I really think the court
15 needs to look in terms of making sure that from
16 now on, when courts are built -- and I know the
17 trustee wants the court in their buildings, so all
18 of the administration's in one place, but if it's
19 not on a bus line, it does the defendant no good.
20 Now, I have personally witnessed clients
21 running to court, if the weather's bad, there's an
22 accident, they're on the public bus, they come in,
23 they've been defaulted. The bailiffs call their
24 name. Then when they say, "I'm here," they say,
25 "Sorry, we called your name out three times. Too

1 bad that you're late. Appeal."
2 And I think this question in terms of
3 flexibility is important. It may not be something
4 you can put in the statute, but it may be a policy
5 something or somebody from an instructional court
6 saying to judges, "Look, if you know most of the
7 defendants are on a bus line, the people have to
8 walk six, seven blocks to get to the courtroom and
9 has a 9:00 o'clock, 8:30 hearing --" we all know
10 the weather, what happens. Flexibility should
11 come to the court so people don't feel that "I got
12 defaulted for no fault of my own, and now look at
13 me now. I've got this debt I've got to pay for."
14 I would ask that the Court look at the
15 question of land sale contracts. One of the way
16 people buy houses is land sale contracts.
17 JUDGE BAKER: I don't think Small
18 Claims Courts handle land sale contracts.
19 MR. BOHANNAN: Yes, they do.
20 JUDGE BAKER: Well, they're not
21 supposed to.
22 MR. BOHANNAN: I beg to differ. The
23 way they do it, they file as evictions, and unless
24 the defendant knows the rates at issue, this is a
25 land sale contract, the plaintiff files as

1 eviction, and they'll claim this was a normal
2 landlord-tenant case.
3 JUDGE BAKER: So, it's not that the
4 trial courts are handling things they're not
5 supposed to, they don't know that they're handling
6 land sale contracts?
7 MR. BOHANNAN: Sure. And the
8 plaintiff's attorney knows that, the landlord
9 knows it, but unless there's an ironclad rule that
10 says specifically to landlords, "Look, this is a
11 land sale contract. Do not bring it. You need to
12 go to Superior Court."
13 JUDGE BAKER: Well, in fact there is a
14 rule that says that.
15 MR. BOHANNAN: Well, it may be, Your
16 Honor, but I'm sure it's --
17 JUDGE BAKER: It involves the title to
18 real estate.
19 MR. BOHANNAN: Yeah, and I would just
20 simply ask you to go and look at the data.
21 JUDGE BAKER: I will.
22 MR. BOHANNAN: Okay.
23 JUDGE BAKER: Thank you.
24 MR. BOHANNAN: I would ask on the
25 question of service. One of the things we seem

1 certain is that landlords would know that the
2 tenants had that moved from the apartment, and
3 what they'll do is they file out to service an
4 address, the old apartment, knowing full well the
5 tenant's gone. The tenants never get notice.
6 Now, the constable, when they go out there
7 and put the notice on the door, they may very well
8 send, as required by statute, by First Class Mail.
9 It may not come back, but folks are aware that the
10 tenant has gone, and the tenant gets defaulted,
11 and it may be years before the tenant realizes, on
12 their credit report, when he try to find a new
13 apartment, this new apartment, that this
14 judgment's sitting out there, and it's only too
15 late to appeal.
16 Finally, Judge, I would raise the point
17 that what the court has in their jurisdictions to
18 deal with is important, and that is from the EHC
19 standpoint, that the court staff reflects the
20 community. In many of the courts, there are no
21 African-Americans working at the courthouse. In
22 many of the courts, there are no Lat -- there are
23 no people of Latin descent working there.
24 In many of the courts, if folks speak
25 Spanish, there are very few people on staff who

can speak Spanish to help them with that issue. There are very few staff who understand the culture of the black community. And as we get more and more enlarged with Asian communities, South Pacific Islanders, South Americans in this community, the staff of those courts need to reflect it.

Thank you, Your Honor.

JUDGE BAKER: I have a question for you, sir.

MR. BOHANNAN: Yes.

JUDGE BAKER: Since you represent such a distinguished institution in our community, has it ever concerned you that in a county that has the largest population of minorities --

MR. BOHANNAN: Uh-huh.

JUDGE BAKER: -- this is the only county where, if I may, an institution or a corporation would get two bites out of the apple as opposed to one?

MR. BOHANNAN: Yes.

JUDGE BAKER: Now, do you know how that came to be, sir?

MR. BOHANNAN: No. I think primarily because we -- a corporation may come in without

1 their attorney.
2 JUDGE BAKER: No, no, I'm talking
3 about if a corporation gets beat in the Small
4 Claims Court --
5 MR. BOHANNAN: Sure.
6 JUDGE BAKER: -- in Hendricks County,
7 they have to come and see me at the Court of
8 appeals --
9 MR. BOHANNAN: Yes.
10 JUDGE BAKER: -- if they want to
11 complain.
12 MR. BOHANNAN: Yes.
13 JUDGE BAKER: Here, all they have to
14 do is come to the Superior Court of Marion County,
15 and the formal and, in essence, the
16 self-represented plaintiff has to go get a lawyer,
17 and they can't do that usually.
18 MR. BOHANNAN: Well, I would -- some
19 people would argue that the two could head it off
20 if they learned to appeal. My colleague -- we
21 were talking in terms of the filing fee to appeal
22 if you decide to take it upstairs. I think the
23 problem here is now that we began to organize the
24 computer systems, I'm not sure that the Clerk of
25 Court knew there was judgment against the

1 corporation in the Small Claims Court and they
2 were defeated, or they lost; that in fact that is
3 now a new complaint that may questions of
4 res judicata or something else at the bar.
5 JUDGE BAKER: Okay.
6 MR. BOHANNAN: That may be cause to
7 reduce it, but the question becomes whether or not
8 the clerk here may be required to look and see
9 whether or not someone's lost below, and unless
10 they appeal, they have to file a brand new
11 complaint on the same issue.
12 JUDGE BAKER: Okay. Thank you very
13 much.
14 MR. BOHANNAN: Thank you.
15 JUDGE BAKER: The next name I'm having
16 a lot of difficulty reading, because it's written
17 sideways. The first two initials are "M l." What
18 is your last name?
19 MS. AYANGADE: Thank you. My name is
20 Moni, M o n i is the first name, and the last name
21 is spelled A y a n g a d e.
22 JUDGE BAKER: A y a n --
23 MS. AYANGADE: -- g a d e.
24 JUDGE BAKER: Thank you.
25 MS. AYANGADE: Thank you.

Well, I think everybody that's come here for the landlord-tenant thing is kind of on the same boat as me. I just had a judgment filed against me, which I found to be fraudulent. It's a duplication of bills I already paid. This is from Washington Township, and I hope, you know, this is going to be investigated totally.

Like the other four speakers said, I think they are totally -- they're using that location, not like a business at home, let me call it that way, and it's unfair to the public, you know. There were -- this incident happened back in July of last year, and there was -- they had unnecessary continuances, you know, up to January of 2012.

We all have obligations in our day, and I don't like to park at 52nd and Keystone every day of my life. And the first time we went there, they asked -- I had a counsel. I had to get a counsel, because I had a cosigner, and I was worried about her, my cosigner, because she did this willingly for me. I never had a cosigner before.

But I went ahead to -- a friend's advice, you know, to know, to get a counsel. Well,

initially I went to Legal Services, and they told me they cannot represent me over there, so they referred me to another attorney. I have issue with that one also, that I had to ask her to step aside.

Okay. When we get there, the first hearing, they already told my attorney -- they already asked if I was going to sign off on their paper, and Avril met with me. She knew I was not the type of person that's going to sign off on that.

And also, the Indiana security deposit -- you know, deposition was violated, and I never received a bill for the -- they are totally for the plaintiff, went on filed a motion caption and sent my name to collection agency, and that got me running around with the Legal Services for help, because to me, that's a defamation.

I didn't see the bill, but you already sent my name to collection agency on what I haven't seen. And this landlord also, ever since I've been in the State of Indiana, for more than two decades, I always ask for a checkout inspection. They declined.

They went behind me to do it before I got

it, even though I notified them that I'll be back in the complex at 11:45, but they went there, did the move-out inspection without my knowledge. Then I asked them for a copy. "We'll mail it to you." They never mailed copy to me.

Well, my thing is I'm going to appeal this case, because this is a fraudulent bill they put together, and the obvious one I'm going to tell you about is power and light company. Ever since I've lived in this State of Indiana, I always had power and light company. You request for service, and when you're ready to leave, you ask them to remove your name, and I did just that.

Guess what? On the bill that they put together, power and light company sent me my bill up to the time that I moved out upon my advancement, but the complex went ahead and billed me again from July 5th to the end of July, July 31st. It wasn't on my lease that week, but for whatever reason, for what unknown reason, all this, you know.

And then the judgment was -- judgment was for them, and I think, you know, enough is enough. The public are getting ripped off, they're getting intimidated in Small Claims Court, and the article

in the Wall Street journal last year, I mean it's redundant. There's nothing -- no truth for Washington Township. That's how far I'm going to go, because I'm really upset about the situation.

JUDGE BAKER: Thank you, ma'am.

MS. AYANGADE: Thank you.

JUDGE BAKER: Richard Gonon?

MR. GONON: Good evening, Your Honor. My last name is spelled G o n o n. My name is Richard Gonon. I'm a fellow member of the Indiana Bar. I've been practicing law for many years, and I'd just like to take this opportunity to share with you some concerns that I have in my capacity as an advocate for my client, as well as an officer of the Court.

If I were to file 1,000 lawsuits in the Marion County Small Claims Court system, regardless of whether the cases were filed at the Decatur Small Claims Court, the Warren Small Claims Court, the Washington Small Claims Court or the Perry Small Claims Court, I'd like to share with you that over the years, if three people, three defendants, three separate defendants out of a thousand, filed a motion for change of venue, whether it would be because of they're on

1 disability or because of a sickness or because
2 they don't have transportation, then three out of
3 a thousand in my world would be the norm.
4 Moreover, with regard to the issue of venue
5 and forum shopping, I'd like to share with you,
6 Your Honor, a point that I think is extremely
7 important. For many years I represented creditors
8 and I've represented third-party debt collectors,
9 whether it be a collection agency or a debt buyer.
10 A debt buyer, in contemporary terms, is an entity
11 that buys portfolios of account receivables from
12 lenders such as finance companies, banks or what
13 have you.
14 I'd like to share with you that over the
15 years that I've been representing creditors in the
16 Marion County Small Claims Court forum, a very
17 salient point is that not all judges -- and I say
18 this with all due respect to the small claims
19 judges in Marion County that are present
20 tonight -- not all judges, duly elected in the
21 Marion County Small Claims Court system, and
22 probably even more importantly, not all of their
23 pro tems, function in a way where they're
24 impartial.
25 And what I'm going to come out and tell you

1 is, sir, is that some of these judges have a bias
2 against third-party debt collectors. Some, not
3 all. And when you have a pro tem who specializes
4 in bankruptcy or specializes in helping the
5 defenseless and oppressed, and they're given an
6 opportunity to take the bench, well, the
7 David-and-Goliath syndrome is quickly reversed,
8 and they might engage in judicial decision making
9 that might be highly prejudicial to the rights of
10 the creditors.
11 I can assure you that when that happens,
12 it's extremely disconcerting to the debt
13 collection community, it's extremely disconcerting
14 to myself as an officer of the Court, and that
15 opens up Pandora's box or the floodgate to move to
16 another court, where at least the bias element can
17 be mitigated or eradicated.
18 And I was not present in the two previous
19 meetings. I have no idea whether that point was
20 articulated by anybody. However, I feel quite
21 strongly, sir, that that's a very important point
22 that should not be overlooked.
23 Moreover, I'd like to respectfully submit
24 to you, sir, that I strongly disagree with the
25 advocacy that was articulated to you by a

gentleman by the name of Mr. Bohannan. I believe that's the gentleman's name who was here on behalf of the NAACP.

In listening to that gentleman articulate to Your Honor very carefully, he seems to be very concerned that filing lawsuits in Marion County in an inconvenient forum can work an undue hardship to people that might be defenseless and oppressed or not have transportation or not be able to be in court.

As Your Honor is well aware, there are cardinal maxims of equity that mentally competent adults are required to adhere to in a judicial process: Equity aids the vigilant, and he who seeks equity must do equity. Again, equity aids the vigilant, and he who seeks equity must do equity.

In all the years that I've practiced debt collection law in Marion County, I can state unequivocally to you, Your Honor, that when a lawsuit is filed in any of these courts, service of process by the duly elected constable takes place three to four to five weeks before the notice of claim day.

If there's a situation that comes into play

1 which might make it extremely arduous for a
2 defendant to appear, then what does he have to do?
3 He has to act vigilantly and he has to act
4 diligently, so -- to comply with the maxims of
5 equity that he who seeks equity must do equity.
6 He cannot just sit back and do nothing, and then
7 let a default occur, and then say, "Woe is me."
8 So, I have very significant concerns about what
9 was articulated to you by that gentleman, for
10 those reasons.
11 In addition, I want to tell you that over
12 the years, I have never, ever seen a fellow member
13 of the Bar try to be a bully and knowingly and
14 intentionally overreach or use undue influence to
15 try to get a debtor to enter into an agreement
16 that would be basically prejudicial to that
17 person's rights.
18 I make it a point every time I'm in Small
19 Claims Court, regardless of whether I'm in
20 Bloomington or Indianapolis or anywhere else in
21 the great State of Indiana, I identify myself, I
22 let them know I'm a debt collector under federal
23 law, I'm here to attempt to collect a debt, and
24 that if they don't want to talk to me, they have
25 an absolute unequivocal right to see the judge.

And I just want to let you know that, Your Honor, so this way at least somebody from my side of the coin can hopefully balance the scales of justice. Okay, sir?

JUDGE BAKER: Thank you very much.

MR. GONON: Thank you, sir.

JUDGE BAKER: Hal Thurston?

MR. THURSTON: Good evening, Judge.

JUDGE BAKER: Good evening.

MR. THURSTON: Hi. My name is Hal Thurston. My last name is Thurston, T h u r s t o n.

Your Honor, I'm a new lawyer. Law is a second career for me. I joined the Marion County Public Defender Agency in 2003, where I handle criminal cases. I have a couple of anecdotes for the Court with regard to Small Claims Court.

A young lady who works at Juvenile Court for the Marion County Clerk came to me a few months ago regarding a case that was pending in, I believe, Wayne Township. I don't believe it, I know it was in Wayne Township.

The case was this: She rented an apartment for her and her two children. She lived there for a year. She had a move-out inspection. She moved

1 out. She didn't receive her deposit back. She
2 contacted the, as it turns out, corporation who
3 had leased the property to her, and they sent her
4 the notice that "Here's the reasons why you're not
5 getting your money back," as is required by law,
6 and she received it within 45 days.
7 She filed in the Small Claims Court of
8 Wayne Township, contesting the information they
9 had supplied. She didn't know how to -- she's a
10 clerk, she's a pretty smart girl, and she knows a
11 lot more about the law than most citizens, but she
12 was not sure on who to name as the respondent in
13 the case. She asked the court's assistance and/or
14 they helped her and told her, "You've got to name
15 the registered agent."
16 She named the registered agent. She did
17 not name the corporation. The registered agent is
18 the secretary of the corporation, an owner of the
19 corporation, the wife of the president of the
20 corporation, and this was a matter about a lease,
21 and that was made clear in her claim.
22 The case came to court. The corporation
23 did not bring an attorney, as required by law, and
24 merely said, "You've named the wrong party." The
25 court granted her judgment in her favor to the

1 tune of the deposit, $650, plus a hundred dollars
2 for miscellaneous costs. She -- of course, they
3 don't pay her the money. She has to file against
4 this corporation pro supp.
5 She is about to appear in court for her pro
6 supp hearing, and she gets a notice filed by a law
7 firm telling the court that since she failed to
8 name the proper party, the case must be dismissed,
9 along with a lot of other legal mumbo jumbo,
10 probably the proper forms that you file.
11 She appeared -- she filed an answer to that
12 and showed up in court. The Small Claims Court
13 judge advised her she should dismiss her claim
14 because he doesn't like to overturn his decisions,
15 and he would have to overturn it because she had
16 named the wrong party. Now, keep in mind, under
17 the local rules, and in fact under our rules of
18 procedure, the corporation had filed too late to
19 suggest that she had named the wrong party.
20 She takes the judge's advice and asks him
21 to dismiss her victory, and he suggests to her to
22 pay another $87 and refile, and she does it, she
23 goes back into court. Same evidence is submitted.
24 He rules the other way.
25 That's where I came into the case. I said,

"Well, you need to appeal, and we have to figure out how do that." And unfortunately, I'm a new lawyer and I'm not that great at this, so we're going to have to do research, and we looked into it. And there's some information on-line that tells you that you go to Marion County to make this kind of a filing, but you make the filing in the Small Claims Court.

So, she made a filing in Small Claims Court requesting to be found indigent, which she didn't do on the first two, and she frankly should have. I suggested that she do that. She only makes twenty thousand dollars -- a little over twenty thousand a year and she's supporting two small children with no child support. She made that clear to that judge in her motion. She filed a motion to appeal, and it was proper and it was well done, and she filed a request for indigency.

The response from the court was this: The judge wrote "Denied" on her request for appeal -- I don't believe he has that authority -- and wrote "Denied" on the request for indigency. I redid her indigency paperwork, brought it down to Marion County, and asked them, "How do we go about filing in Marion County on this matter?" They told us

1 that they thought Court 10 handled it.
2 I went up to Court 10, filed the paperwork,
3 they granted the motion for indigency. Then I
4 filed a request to the judge to reconsider his
5 denial of her request for appeal, and he granted
6 the request.
7 But here's what we're looking at. We're
8 looking at a young lady with two children, who has
9 now come out of pocket for $175. Luckily I'm a
10 friendly lawyer, and I had told her I would help
11 her for nothing on this case.
12 But that's the situation she's facing, and
13 I don't understand how a judge could react that
14 way, not to mention, as somebody else mentioned
15 here, and not the young man who was speaking
16 before me, that they weren't -- they weren't heard
17 by the judge.
18 One of the things that they had on her bill
19 that she said -- that said she owed them money was
20 $40 for a furnace filter. That's a hell of a
21 furnace filter, Your Honor. And this lease says
22 that the company has to pay for the furnace
23 filter. She tried to show that to the judge and
24 say, "Well, at least I get my $40." No, he
25 wouldn't hear it. And so, I don't understand why.

1 But I think the issue is bigger than what
2 we're addressing here. This isn't a procedural --
3 only a procedural problem, and I think that the
4 article that came out in the paper -- and I can't
5 find the article now. I can't remember if it was
6 in the New York Times, the Wall Street Journal,
7 the Indianapolis Star. It was in one of them.
8 JUDGE BAKER: Wall Street Journal.
9 UNIDENTIFIED SPEAKER: Wall Street
10 Journal.
11 MR. THURSTON: And in that article,
12 reading it on its face, it was pretty clear that
13 the responses made by the Small Claims Court judge
14 indicated that he thought he was operating a
15 business for profit, and that it was his duty to
16 secure as many cases as he could, and therefore he
17 had to accommodate the big filers. Small Claims
18 Court can't be about big filers, Judge.
19 The next anecdote case I have occurred in
20 Washington Township. Once a month for the last
21 five years since I've been a lawyer, I volunteered
22 at the Shepherd's Center. That's a senior
23 citizens group. They meet on Wednesdays at North
24 Church, and it consumes a half a dozen churches of
25 senior citizens.

And I got a call one day. I'm there on Wednesday. I get a call from a couple of senior citizens. They explain to me that they've received this notice. The filing date on it was only three days before the hearing, the file stamp date, and they had to appear in court.

I told them, "I can't be in court today. I have other commitments. You need to go down and tell the Small Claims Court judge that you've talked to a lawyer, you just received notice today, and you need to present -- be able to prepare a case and present it."

This -- the Small Claims Court advised -- according to them, the Small Claims judge advised them, said to them, "Well, don't you owe the rent?" And they said, "Yes." Case ended. He found against them. They lost their home. They lost $1800 of deposit. This was a couple of senior citizens that didn't miss one rent payment, but there was excuses.

But they didn't know how to make the legal argument to make the excuses, and I think the judge -- I don't know what the -- you know, I know there's rules, they've got their ethics and all of that, but in Small Claims Court I think a judge

1 has to do a little more than tell people, "I can't
2 advise you have as to the legal aspects of your
3 case." I think he can tell them, "Here's what you
4 need to tell me."
5 And I've also had experience in Washington
6 Township Small Claims Court, and it was completely
7 the opposite. The judge seemed very understanding
8 and caring about what was going on. Of course.
9 I'm a lawyer standing there.
10 And that's all I have, and I thank the
11 Court for your time.
12 JUDGE BAKER: Thank you, sir.
13 Jan McIntyre?
14 MS. MCINTYRE: It's actually Janet,
15 J a n e t, M c I n t y r e.
16 I just have a couple of observations to
17 make. I recently, last fall, was involved with a
18 case in Perry Township Small Claims, and it was
19 through a child of mine who has lived in a condo I
20 own since 2003, had fallen on somewhat hard times
21 and had made an oral agreement with the board, a
22 member of the board, the treasurer, to pay what
23 she could. She was definitely behind, the money
24 was definitely due, but because my name is on the
25 deed, all of a sudden I'm notified to appear in

court.

JUDGE BAKER: Is this for the fee that people pay when they live a condominium?

MS. MCINTYRE: The association fees --

JUDGE BAKER: Thank you.

MS. MCINTYRE: -- yes, yes.

JUDGE BAKER: All right.

MS. MCINTYRE: And the money was due.

JUDGE BAKER: Okay.

MS. MCINTYRE: I'm not experienced with courts. I got to Small Claims Court on time and was called out of the room and taken to another room, where two of the board members, the lawyer for the board, and I think maybe his secretary were all seated, and the lawyer started out saying, "Look," he said, "you know, can't we settle this out of court?" He said, "Already you're looking at $800 in lawyers fees."

I'm thinking, "Oh, okay. I know the board has money due, but $800?" But because my daughter had an agreement with a board member, I said, "No, I'd like to have her in court," so it was postponed.

When we finally got before the judge, who I have to say was extremely helpful to me, not

knowing the ins and outs of how to ask questions and who to ask them to. He was extremely helpful. It was agreed, yes, there was an agreement, but it should have ended. It was never verbally ended, and I had been told that verbal agreements can be binding.

But anyway, the lawyer presented, as part of his exhibit, his bill. Now, he had told me a month before that I already owed over $800, and the bill he presented that day was not $800, it was less than. And I asked the judge if I could ask the lawyer a question, because he definitely had intimidated me. I -- you know, I'm on Social Security. I know the debt's due, but I don't have the money.

JUDGE BAKER: How much was the debt that was due?

MS. MCINTYRE: Twelve hundred.

JUDGE BAKER: And what the attorneys fee?

MS. MCINTYRE: It ended up altogether twenty-one -- with interest, twenty-one fifty.

Anyway, I asked the judge if I could ask the lawyer a question. He said okay, and I said, "You know, a month ago you told me your bill was

1 over $800," I said, "and here the bill is just
2 about that." I said, "Were you trying to scare
3 me? And he kind of, "Well, I don't remember
4 saying that." And the judge said, "Go ahead and
5 answer it. I want to hear." And he said, "Well,
6 if I said it, I probably was." So, I was totally
7 intimidated by the lawyer.
8 It turns out that on his bill, which I paid
9 in full, he had charged me -- he told the
10 association not to talk to me at all, so when I
11 called his office to get copies of what exactly
12 was due, he charged me for 15 minutes of his time.
13 Never told me I was being charged, but he charged
14 me.
15 So, Small Claims Court is intimidating.
16 I'm nervous talking to you, but it made me mad.
17 JUDGE BAKER: Janet, let me ask you
18 this: When you were taken back to the room --
19 MS. MCINTYRE: Uh-huh.
20 JUDGE BAKER: -- you said you were
21 taken back to a room where the board members were.
22 Who took you back there?
23 MS. MCINTYRE: The lawyer.
24 JUDGE BAKER: Oh, okay.
25 MS. MCINTYRE: It wasn't a bailiff.

1 And at Perry Township, they have always answered
2 the phone. And again, as I said, the judge tried
3 to be very helpful in guiding me, but I was not
4 aware I didn't need to talk to the lawyer. I was
5 not aware of any of this. And I was not aware I
6 didn't need to pay him for something, as the
7 plaintiff's -- or what's -- I was the plaintiff.
8 I don't --
9 JUDGE BAKER: You were --
10 MS. MCINTYRE: I was the defendant.
11 JUDGE BAKER: Yeah, you were the
12 defendant.
13 MS. MCINTYRE: That should have been
14 provided to me when he told the board not to talk
15 to me.
16 JUDGE BAKER: Was all of the -- when
17 you got your notice of the claim --
18 MS. MCINTYRE: Yes.
19 JUDGE BAKER: -- was there attachments
20 to it setting forth what the bill was?
21 MS. MCINTYRE: Yes, I believe there
22 was, but the thing is she had continued to make
23 overpayments, and time had passed, and I wanted a
24 current statement.
25 JUDGE BAKER: Okay. Thank you.

MS. MCINTYRE: Uh-huh.

JUDGE BAKER: Thank you very much.

MS. MCINTYRE: That's all I have to say.

JUDGE BAKER: I appreciate it.

MS. MCINTYRE: Oh, is there any way I can get my money back from that lawyer?

(Laughter.)

JUDGE BAKER: I can't help you in that regard. I suspect that if the lawyer -- if you know who the lawyer is, you might want to call him and tell him, because I suspect he would love to give that money back to you.

(Laughter.)

MS. MCINTYRE: Okay. And aren't they supposed to send me a release of judgment, too?

JUDGE BAKER: Have you paid it off?

MS. MCINTYRE: Yes, totally.

JUDGE BAKER: And have you asked for a release of judgment?

MS. MCINTYRE: I'm supposed to? See, I didn't know I was supposed to ask them.

JUDGE BAKER: I'm not sure that you're supposed to ask them. I'm going to suggest that you do so.

MS. MCINTYRE: Okay. Thank you.

JUDGE BAKER: Thank you.

MS. MCINTYRE: From the lawyer or the court?

JUDGE BAKER: The court.

MS. MCINTYRE: Thank you.

(Laughter.)

JUDGE BAKER: Jesse Clements.

MR. CLEMENTS: Hi, Judge Baker. It's an honor.

Actually, I came down here more as --

JUDGE BAKER: Can you tell us your name?

MR. CLEMENTS: Oh, I'm sorry; Jesse Clements, C l e m e n t s.

I don't have any experience with the Small Claims Court, so I guess I came down here more out of frustration. I've been before three judges in the Superior Court, and one magistrate, and the gentleman who had the anecdotes here had said that there's a bigger problem, and, you know, I'll spare you the details, the factual details, that I have that I think would make some of the -- some, you know, courts gasp.

But the -- I've successfully litigated in

1 Cook County, Illinois, which is the county that
2 houses Chicago, a six-year case with attorneys on
3 the other side, and won a $26,000 judgment after a
4 full-blown two-day hearing what all of the
5 evidence rules and everything. I have
6 successfully litigated in Florida.
7 But now -- but here in Marion County,
8 there's a special bias and animus toward pro se
9 litigants that do research and cite case law to
10 support their positions, and I think --
11 JUDGE BAKER: How do you -- how do you
12 perceive that that animus or prejudice is
13 articulated?
14 MR. CLEMENTS: Oh, well, like, for
15 example, at a damages hearing, I was not permitted
16 to make an offer of proof. Expecting that the
17 judge would deny me the right to make an offer of
18 proof, I had case law suggesting that the judge
19 has to let me make an offer of proof --
20 JUDGE BAKER: Uh-huh.
21 MR. CLEMENTS: -- that it's a
22 fundamental component of due process of law that I
23 be able to create a record for appeal, and the
24 judge said, "You can only do a -- you can only do
25 an offer of proof during a -- during a trial."

1 Well, this was a damages hearing. This was a
2 trial. There was evidence taken at the hearing.
3 A motion to compel for sanctions was
4 granted four days after it was filed, so I had no
5 opportunity to respond, so the court considered an
6 ex parte communication in ruling -- in issuing a
7 sanction.
8 JUDGE BAKER: This -- this wasn't
9 Small Claims Court?
10 MR. CLEMENTS: Right, this was all in
11 Superior Court. And I guess what -- the thing
12 that I found is a special boldness in these
13 judges, in my opinion, not following the law, and
14 I believe that that's grounded in the way that the
15 judges are elected here in Marion County -- or I
16 should say they're not elected, they're
17 effectively appointed by -- by back-door,
18 cigar-chomping party cats.
19 JUDGE BAKER: All right. We can talk
20 about the selection of Marion Superior Court
21 judges, I suspect, a lot longer than --
22 MR. CLEMENTS: Right.
23 JUDGE BAKER: -- you can care to, and
24 I would be glad to talk to you about that.
25 MR. CLEMENTS: Right.

JUDGE BAKER: But I'm just not on that mission today.

MR. CLEMENTS: I understand. And so, that is -- that's -- I think that that's where the problem is, is that the judges are not accountable through elections to the people of Marion County.

JUDGE BAKER: Thank you.

MR. CLEMENTS: Thank you.

JUDGE BAKER: Tim, do you have any other sign-ups?

MR. NOWACKI: That's all, sir.

JUDGE BAKER: Is there anybody else who has appeared, who wanted to make a statement, but has not indicated that they wanted to make a statement on the sign-in sheet?

Yes, ma'am. Would you come forward, please?

MS. ARNOLD: Joan Arnold, A r n o l d.

JUDGE BAKER: First name?

MS. ARNOLD: Joan.

JUDGE BAKER: Joan Arnold? Thank you, ma'am. Go ahead.

MS. ARNOLD: For about six months I had court appearances last year. The defendant was a no-show all -- each time that I was there.

I think it was four times. So, there's really nothing to compel people to show up to court, which is --

JUDGE BAKER: What was the nature of the case?

MS. ARNOLD: Our parked vehicle was hit by a scooter.

JUDGE BAKER: So, somebody damaged property of yours?

MS. ARNOLD: Right.

JUDGE BAKER: Okay. And you filed a lawsuit in order to get recompensed --

MS. ARNOLD: Right.

JUDGE BAKER: -- for that damage? Now, you understand that people are not required to challenge that. If you sue them for $500 and they agree, that's -- you're going to get your judgment. Now, then you have to bring them back into the proceeding supplemental to collect it; right?

MS. ARNOLD: I received a judgment in our favor --

JUDGE BAKER: Yes.

MS. ARNOLD: -- for the amount --

JUDGE BAKER: Uh-huh.

MS. ARNOLD: -- $1500, that actually turned out to be $2300.

JUDGE BAKER: Okay. And what is your concern?

MS. ARNOLD: There's nothing that compels people to show, and there's nothing that compels people to pay.

JUDGE BAKER: Well, I'm going to disagree. If you go through the proceeding supplemental and that person is notified that they're to appear in court for a proceeding supplemental and they ignore that, they're probably going to find themselves in custody.

MS. ARNOLD: Okay. I was told that a body warrant could be served on this person --

JUDGE BAKER: Uh-huh.

MS. ARNOLD: -- but at the end of the -- at the end of the -- at the end of the fourth court appearance, the judge realized that she, the woman, had never signed the summons, so she couldn't be -- a body warrant could not be attached. That's what I was told.

Her boyfriend signed the first summons, but she had never signed, because I didn't know who to -- who would be liable. It was the boyfriend's

scooter, she was the one who was operating the scooter, but he said that a body warrant could not be attached. And then I found out at the end of that time, at any rate, even if a body warrant had been attached, that information does not go into the police data base. So, that's what I was told.

JUDGE BAKER: It's a separate case, that's correct. We can talk about the computer system in the Indiana courts as well, and boy, you've got a point there. It's hard to believe that in the year 2012 we don't have a very sophisticated computer system in Indiana, but we don't.

MS. ARNOLD: This was a waste of my time is what I'm saying.

JUDGE BAKER: Well, I think it -- I don't think it is a waste of your time in the fact that I -- if you go back to the court and get the proper paperwork so that you get the right person notified and you get them in there, you're going to get paid. Be persistent.

MS. ARNOLD: Okay. I was told I had to find my own server.

JUDGE BAKER: Oh, no. If you pay the $13, the constable will take care of that.

MS. ARNOLD: All right. All right.

JUDGE BAKER: Thank you, ma'am.

Is there anybody else present -- yes, sir. Please come forward.

MR. REGUCCI: Good evening, Your Honor. My name is Tony Regucci. That's R e g u c c i. I've been a landlord and a property manager in Indianapolis for about 30 years now. I wanted to make a -- kind of a rebuttal, and also my comment.

First of all, the rebuttal is concerning the young lady from the law school that -- she spoke earlier this evening concerning the issue of -- the habitability issue and bringing it up in the Small Claims Court as a part of a defense for a defendant.

It's been my experience that in -- when I go to Small Claims Court and a tenant brings up an issue that the property is in disrepair, that the landlord doesn't take care of it, that has not been the case prior to the time that they moved in. We have a move-in inspection sheet, and we are -- that's available to bring to the Small Claims Court.

JUDGE BAKER: You bring it, don't you?

MR. REGUCCI: Oh, if I need it, yes, it's available in the tenant file. Usually the issue is that the tenant has created the damage and is now using that as a defense not to want to pay the rent. So, I think that should remain as an issue for a damage hearing and not be brought up as part of the possession hearing. That's a separate issue.

JUDGE BAKER: Okay. Good. Thank you.

MR. REGUCCI: Thank you. Now, I have one other comment to you.

JUDGE BAKER: Yes, sir.

MR. REGUCCI: I've been fortunate, I suppose, to have been in five of the Small Claims Courts here in Marion County, and my experience has been that the judges have been very, very fair. When there's been a situation where there's a contested hearing with a tenant and the judge was able to rule from the bench, the judges have been very fair in their explanation, very efficient, and very easy to understand, and even whether I win or lose, at least I felt like I'd had my day in court. I think that that's very, very important.

Now, my main issue for this evening,

1 though, has to do with just one of the courts, and
2 it has to do with the facility itself. Coming
3 down to Center Township Small Claims Court, I have
4 to start off by paying $7 to park. All of the
5 other townships, you can park for free. There's
6 either separate free-standing buildings or in
7 combination with the Township Trustee, those sorts
8 of things. So, immediately it costs you money
9 just to come downtown, number one.
10 Number two is, having gone to the Center
11 Township Small Claims Court for so many years,
12 going back to Judge Hazeldines, a long time ago,
13 the courts seem to be getting more and more cases,
14 and, of course, most of the tenant issues are
15 going to be in Center Township. There are more
16 rental properties in that area.
17 So, going into the court, the biggest
18 problem is that there are just too many people for
19 the size of the facility. Because of that, there
20 is a feeling of we have to move people through.
21 Sometimes the constables need to be very strong in
22 the way they handle the people that are there, and
23 I understand why; they have a large number of
24 people to take care of. So, we don't get the same
25 courteous service that we get at the other Small

Claims Courts that we get in Center, but I understand why.

There's not enough seating many times, so they have to be moved to another part of the room. They actually have to have the back row set for -- just for landlords who need to get writs of restitution to -- so they're able to sit. Now, I understand there are fire laws involved where they have to have people sitting. It's really a very, very poor situation when I look at it compared to the other four Small Claims Courts that I regularly attend.

So, my suggestion would be to move the Center Township Small Claims Court out of that area. Now, I don't believe there's anywhere to expand it in any way, but move it out to a separate area, outside the Small Claims Court -- I'm sorry -- outside the City-County Building, where parking is available and people are not clogged and pushed through like cattle to get through the system, because there are just simply so many cases.

And I appreciate the work that the Small Claims Court people do at Center Township, because I think they're really under duress from quantity

of cases as well as the clientele.

JUDGE BAKER: Mr. Regucci, you're not going to be surprised why I picked 6:00 o'clock to have the hearing, so you wouldn't have to pay for parking; right?

MR. REGUCCI: Okay.

JUDGE BAKER: Thank you.

MR. REGUCCI: You're welcome. Thank you.

JUDGE BAKER: Is there anybody else who wishes to make a statement?

(No response.)

JUDGE BAKER: Well, I want to thank all of you who have attended and heard these presentations. It is the case that we will have a transcript prepared, which will be subject to public scrutiny when we get all of our information gathered. It is our intent that we will soon meet and go over all of the information that we have thus far received and will receive, and that we will then sit down and try to write up some findings and make some recommendations.

Our recommendations will be made first to the Indiana Supreme Court Rules Committee. We will make recommendations potentially to the

Indiana General Assembly. But through this all, we'll also have an ongoing dialogue with our Small Claims Court judges. We're very impressed with the fact that they have been periodically meeting with Judge Rosenberg and have tried to address many of the issues that we have talked about here this evening.

My assistant in the back of the room has a document for those of you that wish to send something to us, and it has our contact information, and it also will help you if you want to think about something and just write us a note.

Judge Rosenberg, once again, we thank you very much, sir, for --

JUDGE ROSENBERG: I'm here.

JUDGE BAKER: Thank you, sir, and your staff for taking care of us, and even seeing that the old Judge got coffee and some water. That's very sweet of you.

And thank you, sir, very much for your efforts.

And we'll stand adjourned.

- - -

Thereupon, the proceedings of March 7, 2012 were concluded at 7:17 o'clock p.m.

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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Wednesday, March 7, 2012 in this matter and transcribed by me.

Lindy L. Meyer Jr.

Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires October 27, 2016.

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