

### Judge Baker, cont.

Judge Baker's many community activities include his church and the Boy Scouts (where he attained Eagle Scout status as a youth).

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board's Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

### Judge Najam, cont.

"Caught in the Middle: A National Symposium on the Role of State Intermediate Appellate Courts," attended by judges from 22 states, the first such national conference.

He has served as a member of the Indiana Supreme Court Committee on Rules of Practice and Procedure (1995 to 2005) and the Indiana Supreme Court Judicial Technology and Automation Committee (1999 to 2005), and he represents the judiciary on the Indiana Department of Homeland Security Counter-Terrorism and Security Council.

Judge Najam is a member of the American, Indiana, and Monroe County Bar Associations, a graduate of the Indiana Graduate Program for Judges, a Fellow of the American, Indiana and Indianapolis Bar Foundations, a member of the Indiana University Maurer School of Law Board of Visitors, a member of Phi Delta Phi legal fraternity, and an Eagle Scout. Judge Najam and his wife live in Bloomington.

### Attorneys for the Parties

#### For the Appellant

**Joel C. Wieneke** lives in Morgan County, Indiana with his wife, and two children. He is a former law clerk for the Honorable Judge Patricia A. Riley, and also had the pleasure of clerking one summer during law school for the Honorable Judge John G. Baker. He primarily practices criminal defense at both the trial and appellate levels, and is fortunate to have his wife as his managing law partner. When he is not tackling jurisprudential concepts, he enjoys helping coach little league baseball and watching the Disney movie "Frozen" over and over and over again (or at least his three-year-old does). Usually when he is in Monroe County, you will find him at Yellowwood State Forest, or Hoosier National Forest--bow in hand.

#### For the Appellee

**Jesse Drum** is from Burlington, KY. He earned a B.A. in English Literature from Northern Kentucky University in 2009 and graduated from Indiana University Maurer School of Law in Bloomington in 2013. During law school, he was a Notes and Comments Editor for the Indiana Law Journal. His student note, "Oh, it is you, is it? Closing the Door on Reasonable Resistance to Unlawful Police Entry in Indiana", was published in the ILJ journal.

Jesse joined the Office of the Indiana Attorney General as a law clerk in Criminal Appeals in May 2012. In February 2014, he was promoted to the position of Deputy Attorney General in the same division. He now handles state criminal and post-conviction appeals and federal habeas corpus.

He has presented two oral arguments in the Indiana Supreme Court and this will be his sixth oral argument in the Indiana Court

### What happens after oral argument?

After oral argument, the judges confer to decide the outcome. A designated writing judge drafts an opinion for the others' review. Final language may involve several drafts and significant collaboration.

Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, some reverse in part, and some do both. Not infrequently, the opinion instructs the trial court about the next appropriate course of action.

Many opinions are unanimous, although non-unanimous decisions (2-1) are not uncommon. Dissenting judges usually express their views in a separate opinion that becomes part of the permanent record of the case.

Judges might also write separate, concurring opinions that emphasize different points of law or facts than the main opinion.

No rules or laws govern how fast the court must issue an opinion. But the court strives to decide cases within four months of receiving all briefs, transcripts and other records.

Once issued, all opinions are published on [www.courts.in.gov](http://www.courts.in.gov) and maintained in the permanent records of the Clerk of Appellate Courts.

Parties can appeal decisions of the Court of Appeals to the Indiana Supreme Court by filing a petition to transfer within a prescribed number of days. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason.

If the petition is denied, the Appeals Court decision stands.

### Appeals on Wheels

The Court of Appeals hears oral arguments across Indiana to enable Hoosiers to learn more about the judiciary's indispensable role in Indiana government. Since its 2000-2001 centennial, the court has held more than 400 "traveling oral arguments" at high schools, colleges, law schools and other venues. This will be the court's twenty-fourth Appeals on Wheels event this year.

#### Court of Appeals Mission Statement:

**"To serve all people by providing equal justice under law"**

## SYNOPSIS

In April, 2012, Santiago Valdez was at his sister's house in Muncie. He had been drinking

and doing drugs. At some point in the evening, his sister looked over at him and realized that he had taken his pants off. She immediately phoned the police.

Before she was able to speak to dispatchers, however, Valdez was attacking her—he pushed her onto the couch and got on top of her. She was able to leave the phone on, and the police dispatcher could hear the ensuing struggle, which was recorded. Shortly thereafter, the police arrived at the house where they found Valdez and his sister without clothes.

Sanchez was charged with, among other things, attempted rape, criminal confinement, and battery. Valdez planned on pleading insanity, and began personally writing motions to the judge. In these motions, he would claim that he needed medical attention because prison officials had installed electronics inside of him that were cutting him from the inside. One of his motions requested that he be allowed to represent himself, a request that was denied.

At trial, the parties agreed to tell the jury about a previous criminal conviction Valdez had in 1993; Valdez believed it would aid his insanity defense. They agreed to caution the jury to only use the previous conviction for that purpose, but, in an oversight, no one actually delivered this warning to the jury. This is one issue in this appeal.

Another issue is that the trial court did not allow Valdez to introduce several of the documents from the 1993 case because the documents had not been properly authenticated. Valdez argues that this was particularly unjust, as the prosecutor repeatedly said that Valdez had zero history of mental illness, when in fact these 1993 documents suggested he had mental issues going back decades.

During closing arguments, the prosecutor wanted to convince the jury not to believe an expert witness who testified that Valdez was insane at the time of the incident. The prosecutor seemed to suggest that the defense attorney had coached the witness.

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## Court of Appeals of Indiana

*Hearing oral argument at  
Monroe County Courthouse  
Tuesday, June 28, 2016 @ 10:30 a.m.*



### *Valdez v. State*

**18A02-1509-CR-01514**

*On Appeal from*

*Delaware Circuit Court 2*

*The Honorable Kimberly S. Dowling, Judge*

**Indiana Bicentennial 1816-2016**

## Synopsis, cont.

Valdez moved for a mistrial, which the trial court denied. The trial court instead admonished the jury to disregard what the prosecutor had said. Thus, a third issue is whether these comments by the prosecutor entitled Valdez to a mistrial.

## E-filing pilot program in full swing

Late last year, the Court of Appeals received the first Indiana appeal in which all briefs were electronically filed. *Middleton v. State* was assigned to a three-judge panel on Dec. 28, after the court received the appellant's e-tendered reply brief.

The filings follow an Indiana Supreme Court order establishing a pilot electronic filing program for itself, the Court of Appeals and Tax Court.

The pilot started with the Court of Appeals last summer and becomes mandatory as of July 1, 2016, in all appellate courts. All post Notice of Appeals pleadings filed after July 1, 2016, must be processed electronically. The only exception to the mandatory e-filing system is for the pro se individual and in limited circumstances for counsel.

The appellate courts pilot project is part of a larger initiative that will involve all Indiana courts by 2018.

## Interesting Facts

Nine Court of Appeals judges have later served the Indiana Supreme Court, including current Justice Robert D. Rucker.

Judge Frank M. Powers served just 33 days. The longest serving judge by far is Patrick D. Sullivan Jr., at more than 16,000 days. He retired in 2007.

Judge Thomas Faulconer made Indiana history when, as a Marion County judge, he opened his courtroom doors to TV and newspaper cameras for a celebrated murder trial in 1959.

Judge V. Sue Shields was the first woman named to the court, in 1978, and Judge (now Justice) Robert D. Rucker was the first African-American, in 1991.

## Every Docket Tells a Story

### Indiana history as seen through Appeals Court cases

*Indiana Appellate Court Reports, Vols. 1, 2, and 3*, include the complete written opinions of several hundred cases decided by the Court of Appeals in its first two terms. Naturally, the legal issues before the court were many and varied. But the underlying facts, taken together, paint a vivid picture of Indiana's economy and society circa 1891 – the same year James Naismith invented basketball.

**Agriculture** was an economic mainstay, and even city residents maintained livestock. In *The Noblesville Gas and Improvement Company v. Teter*, the court affirmed damages of \$60 against the gas company for the death of Teter's cow after it fell into an open gas line trench.

The opinion notes that by county and city ordinance, "cows were permitted to run at large within the city (of Noblesville) within the day time."

**Railroads** were frequent litigants. *Vols. 1, 2, and 3* record 34 railroad-related appeals, many involving damages to livestock, but also other issues. In a disputed-fare case from Greene County, the court ruled for the railroad but admonished the company "if unnecessary force was used in expelling the appellee from the train."

*Vol. 1* also includes two cases involving **The Western Union Telegraph Co.** One of them, *Western Union v. Trumbull*, cited an 1885 law that anticipates current legal and policy arguments about **Internet neutrality**.

The relevant passage of the law said that telegraph companies "shall in no manner discriminate in rates charged, or words or figures charged for, or manner or conditions of service between any of its patrons, but shall serve individuals, corporations and other telegraphic companies with impartiality."

Then as now, fraught **domestic relations** occupied a significant share of the docket.

In *Story v. Story*, the court affirmed judgment against a father who'd been sued by his daughter for nonpayment of \$3 a week for house and farm work.

*Marshall et al v. Bell* involved a father's promissory note for support and maintenance of a "bastard child."

And in *Adams v. Main*, the court affirmed a trial court's judgment that the appellant had alienated the affections of the appellee's wife, even without proof of adultery. Such proof was not required, per the Appeals Court.

**Contract disputes** comprised a large part of the docket, too, and some of them include telling details about prevailing wages and prices.

In *Greene v. McIntire et al*, the court affirmed judgment against New York City grain merchants who had contracted to buy 20,000 bushels of "grade No. 2 red wheat" from a Knox County farmer. Price: \$14,891, or 74 cents per bushel. (In December 2013, March 2014 wheat deliveries were trading at \$6.39/bushel at the Chicago Board of Trade.)

*Orme v. Cooper*, a Floyd County case, reported the value of 571 pounds of harness leather as \$114.20, or 20 cents per pound.

Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

Another case put the value of a Warren County house, lot, furnishings, and various materials and repairs at \$531.85.

*Vols. 1, 2, and 3* include just **18 criminal appeals** (all others assigned to the Supreme Court), many involving crimes of vice such as gambling, liquor violations and prostitution (referred to in one case as "a certain house of ill fame" in Valparaiso).

The court affirmed the trial court's decision 13 times, or 72 percent.



The Honorable  
John G. Baker.

Monroe County

**John G. Baker** was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court's First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for a few years before joining the Monroe County bench as first a County Court Judge and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13½ years on Monroe County benches, and has written more than 4,500 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana's judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He also retired in 2015 with over 10 years of teaching foreign lawyers at IU McKinney School of Law.

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## Today's Panel of Judges



The Honorable  
Edward W. Najam, Jr.

Monroe County

**Edward W. Najam Jr.**, was nominated and appointed to the Court of Appeals of Indiana in 1992 and was retained by the electorate in 1996 and 2006. He is presiding judge of the court's First District, which covers all of southern Indiana.

Judge Najam graduated from the Indiana University High School in Bloomington, where he was raised, and attended Indiana University Bloomington. While at IU, he was elected to Phi Beta Kappa, elected Student Body President, and earned a B.A. in political science in 1969, with Highest Distinction. He also received the Herman B Wells Senior Recognition Award for academic excellence and campus leadership.

Judge Najam earned his J.D. from the Harvard Law School in 1972. After admission to the Bar, he was Administrative Assistant to the Mayor of Bloomington for two years and an attorney in private practice for 18 years.

He served as a member of the Civil Justice Reform Act Advisory Group and the Local Rules Advisory Committee of the United States District Court for the Southern District of Indiana.

He was a member of the Bloomington Rotary Club, the Greater Bloomington Chamber of Commerce, and President of the Monroe County YMCA Board of Directors. Judge Najam is a director of the Community Foundation of Bloomington and Monroe County.

As Chair of the Appellate Practice Section of the Indiana State Bar Association, he initiated the Appellate Rules Project, which culminated in a complete revision of the Indiana Rules of Appellate Procedure in 2000, the first comprehensive review of the appellate rules in 30 years.

In 2001, he organized and co-chaired

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The Honorable  
Melissa S. May

Vanderburgh  
County

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. Prior to this year, she served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association's Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission (for the public good), Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into "plain English."

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association's Standing Committee on Attorney Specialization, on which she's served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.