

Judge Bailey, cont.

Indianapolis Bar Association's Bar Leader Series; in 2009, he was designated an ASTAR Science and Technology Fellow and is a past Board Member of the Indiana Judges Association.

Judge Bailey is a member of the Supreme Court Committee on Rules of Practice and Procedure and a past Chair of the Indiana State Bar Association's Appellate Practice Section. Also, he is in his second term as a Board Member of the Indiana University McKinney School of Law Alumni Association. Additionally, Judge Bailey serves as an adjunct professor at the University of Indianapolis.

Judge Bailey was retained on the Court of Appeals in 2000 and 2010. His wife is a professor; the couple has two post college-age children.

Judge Baker, cont.

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.

A short history of the Court

The Court of Appeals of Indiana is the state's second-highest Court. It hears appeals from Indiana trial courts and from some state administrative agencies.

The Court's 15 members hear cases in three-judge panels that rotate three times per year. Cases are never assigned to a single judge, and all cases are randomly assigned. The Court celebrated its centennial in 2001.

While Indiana's 1816 Constitution created the Supreme Court, the Legislature created the Appellate Court of Indiana in 1891 as a temporary court to relieve the Supreme Court's growing caseload. It became a permanent Court in 1901 and a Constitutional Court in 1972, after voters ratified a constitutional amendment.

Including judges serving senior terms, 127 judges have served the Court since its inception.

Attorneys for the Parties

For the Appellant

Ronald K. Smith has lived most of his life in Muncie, where he has practiced law since 1975. He earned his B.S. from Ball State University in Political Science (Honors Program) in 1972 and his law degree from Indiana University School of Law/Bloomington in 1975. While in law school, he received the American Jurisprudence Award for his trial techniques.

Since becoming an attorney, Mr. Smith has served as Deputy Prosecuting Attorney for Delaware County, City Attorney for the City of Muncie, Master Commissioner for Delaware Superior Court No. 3/Delaware Circuit Court No. 4, and Public Defender. Mr. Smith is currently a Public Defender for Delaware Circuit Court No. 1 and has maintained a private practice since 1979. Mr. Smith has appeared before the Indiana Court of Appeals and the Indiana Supreme Court for oral argument in both civil and criminal cases.

Mr. Smith is married and has a daughter and 2 grandchildren. He is a member of Hazelwood Christian Church, Muncie, and is a member of several committees, including the Board of Trustees (past chairman).

For the Appellee

Monika Prekopa Talbot was admitted to the Indiana Bar in 1993 and joined the Office of the Indiana Attorney General in February 2000 as a Deputy Attorney General in Criminal Appeals. She became a supervising attorney in 2004. Over the years, she has drafted more than 800 criminal appellate briefs in all areas of criminal law, ranging from minor infractions to serious felonies such as burglaries, rapes, and murders.

Prior to joining the Attorney General's Office Ms. Talbot worked at two different Indianapolis area law firms, where, in addition to some criminal appellate work, she handled civil cases including employment litigation, personal injury, product liability, and family law. Ms. Talbot has twice argued in the 7th U.S. Circuit Court of Appeals, several times in front of the Indiana Court of Appeals, and approximately 15 times in the Indiana Supreme Court.

Ms. Talbot is a native of Budapest, Hungary, and is fluent in Hungarian, English, French, and Spanish. After coming to the U.S., she earned a Master's Degree in English Language and Literature from Rutgers University in New Jersey and a law degree from Indiana University School of Law-Indianapolis.

Besides practicing law, Ms. Talbot has also taught English as a second language. In her free time, Ms. Talbot enjoys traveling, oil painting, gourmet cooking, and various fitness activities.

What happens after a Court of Appeals oral argument

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

Generally, opinions will 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 sometimes 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 of Appeals 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 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.

SYNOPSIS

In August 2012, 14-year-old M.S. received some money from her parents to go bowling. She did not go bowling, however; instead, she and her friend went over to 21-year-old Jerome Lockhart's apartment. Lockhart used M.S.'s money to purchase alcohol, and they joined a party taking place in and around his apartment. The party-goers drank alcohol and smoked marijuana.

At some point in the night, M.S. became very intoxicated and blacked out. Her memories from what happened next come in bits and pieces. She remembered going to the bathroom, and she remembered that Lockhart followed her in there.

Not long after, M.S.'s friend came to the bathroom and found M.S. unconscious on the floor with her pants down around her knees. The friend pulled M.S.'s pants up and took her out to the living room.

M.S. was still unconscious, and so she was propped up in a chair in the living room. The party-goers then threw taco shells, hot sauce, shaving gel, and dishwashing liquid at her, covering her unconscious body. At some point, M.S. was taken to Lockhart's bedroom, where her friend changed her into clean clothes.

When M.S. did not return home at her midnight curfew, her mother became concerned. Her mother went to Lockhart's apartment and found M.S. unresponsive and unable to wake up. The next day, M.S. went to the hospital, where nurses observed bruising on her inner thighs. A later DNA analysis revealed the presence of Lockhart's sperm.

Lockhart was brought in for police questioning, and he signed a form indicating that he understood and waived his *Miranda* rights. He told several versions of what transpired the night in question, but eventually admitted that he had had sex with M.S. He claimed that the sex was consensual.

Lockhart was charged with rape and sexual misconduct with a minor. Before trial, the two sides needed to select a jury; after conducting interviews, the prosecutor decided that a particular

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Court of Appeals of Indiana

Hearing oral argument at

Posey Circuit Court

Friday, April 29, 2016 @ 11 a.m.



Lockhart v. State

18A02-1507-CR-895

*On Appeal from Delaware Circuit Court
The Honorable Marianne Vorhees, Judge*

Indiana Bicentennial 1816-2016

Synopsis, cont.

Black woman should not be on the jury.

One issue on appeal is whether this was appropriate: Lockhart argues that the decision was based on prejudice, as this woman would have been the only Black person in the jury box; the State argues that the decision was not based on prejudice, as this woman had a previous experience with the local police department, and she felt that she had been treated unfairly.

Another issue is whether it was appropriate to play for the jury the video of Lockhart's interview with police. He argues that he did not knowingly waive his rights to remain silent or to have an attorney present because he was intimidated by the police. He also argues that there were several portions of the tape that should have been redacted. He argues that their inclusion violated evidentiary rules, as well as his constitutional rights.

Finally, he argues that he should have been able to present evidence of unknown male DNA that was found by the hospital.

The State counters, however, that any such evidence must be excluded by the Rape Shield Statute, which prevents courts from admitting evidence regarding the personal history of a rape victim.

Why judges (usually) wear black

Black robes are a centuries-old tradition with obscure roots. There are variations. Judges on the Maryland Court of Appeals (that state's highest court) wear red robes. Former United States Chief Justice William Rehnquist added gold stripes to his sleeves – on his own volition.

"I always heard that the reason we wear robes is because we represent uniform justice and not our individual proclivities," Judge Margret G. Robb says.

Tradition, not rules or laws, are behind the relative uniformity of judicial garb.

All of Indiana's current Supreme Court and Court of Appeals judges wear unadorned black robes, although some of the women sometimes wear collared blouses.

Senior Judge Betty Barteau says she always wore a white judicial collar when she was a full time member of the court, but as a trial court judge she occasionally wore navy or dark green robes.

For the record, robes are reserved for court and ceremonial events. Around the office, judges dress like the rest of us.

Every Docket Tells a Story

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.

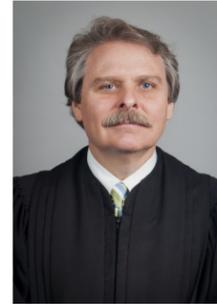
Mr. Trumbull, the appellant in the *Western Union* case cited above, paid 25 cents for his telegram.

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.

Today's Panel of Judges



**The Honorable
L. Mark Bailey**
Decatur County

Lloyd Mark Bailey was raised on the family farm in Decatur County. He was educated in Indiana, earning a B.A. from the University of Indianapolis (1978); a J.D. from Indiana University McKinney School of Law (1982); and an M.B.A. from Indiana Wesleyan University (1999). He also completed the graduate program for Indiana Judges.

Judge Bailey was appointed to the Indiana Court of Appeals by Governor Frank O'Bannon in 1998, after having served as judge of the Decatur County and Decatur Superior Courts.

During his legal career, Judge Bailey has served public interest and professional organizations in various capacities. He was the first Chairperson of the Indiana Pro Bono Commission, having been awarded the Indiana Bar Foundation's Pro Bono Publico Award and the 2002 Randall Shepard Award for his pro bono contributions.

His writings include: "A New Generation for Pro Bono," "Pro Bono Participation Preserves Justice," and "An Invitation to Become Part of the Solution," all published in the *Indiana Lawyer*.

Judge Bailey also chaired the Local Coordinating Council of the Governor's Task Force for a Drug-Free Indiana and the Judicial Conference Alternative Dispute Resolution Committee. Additionally, he has served on the Judicial Education Committee of the Judicial Conference of Indiana.

In 2004, Judge Bailey and his First District colleagues received the Indiana Bar Foundation Law-Related Education Award for their commitment to bringing oral arguments into community settings.

In February of 2006, he served as the Distinguished Jurist in Residence at Stetson University College of Law; in 2007-08, he was the Moderator of the

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**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 many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 1/2 years on Monroe County benches, and has written more than 4,000 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 continues to teach during the Spring semester at the McKinney School of Law.

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

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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.