

“To elaborate . . .”

A monthly column by Marcia J. Oddi

The Year in Review (Dec. 2005 through Dec. 2006) as seen from the Indiana Law Blog

The Indiana Law Blog compiles law-related stories from around the State. The day’s Indiana appellate decisions are summarized, along with federal trial and 7th Circuit decisions of interest, and an occasional state trial court ruling. Last year, for my first end-of-the-year *Res Gestae* column, I went through the several hundred Indiana Law Blog entries for each month from January through November 2005 and pulled out a kind of selective (and purely arbitrary) overview of the year 2005 in Indiana law.¹ Take a look back now at the last two entries from November 2005:

Nov. 29th – The Indianapolis Star reports on in-state wine shipping: “Indiana's 31 wineries won a temporary victory in their fight to ship products directly to consumers' homes when Marion Superior Court Judge Thomas Carroll signed a preliminary injunction last week that allows in-state shipments through March.”

Nov. 30th - Federal Judge David Hamilton ruled today, in *Hinrichs, et al. v. Bosma*, that “plaintiffs are entitled to a permanent injunction against [Speaker Bosma] in his official capacity barring him from permitting sectarian prayer as part of the official proceedings of the Indiana House of Representatives.”

Picking up with December 2005 and moving on through December 2006, what follows is the year 2006 in review, as seen from the Indiana Law Blog.

December 2005

Dec. 1st - "State justices decide jailed defendants must be tried within 6 months of arrest" reported the Fort Wayne Journal Gazette, citing “an Indiana Supreme Court ruling from late August that essentially put a new twist on an old law.” The ruling is *State ex rel. Michael Bramley v. Tipton Circuit Court*, a “published order granting permanent writ of mandamus,” entered 8/26/05.

Dec. 4th - Supreme Court issues unauthorized practice decision against woman providing “immigration services” in a 24-page *per curiam* ruling “On Petition To Enjoin The Unauthorized Practice Of Law,” in *State of Indiana ex rel. Indiana State Bar Assoc., et al v. Ludy Diaz*. According to an Indianapolis Star story dated Dec. 9th, “To the people of Mexico and other Latin American countries, notario publico means highly qualified lawyer. But Diaz, whose legal training consists mainly of attending immigration law seminars, did too little to set the record straight, according to the Indiana Supreme Court.

Dec. 9th - Memorial service for federal Judge Jesse E. Eschbach held Thursday. The Fort Wayne Journal Gazette reported “His courtroom demeanor is something attorneys who practiced before him won’t forget. It became the theme of a memorial service Thursday in U.S. District Court where nearly 80 legal professionals gathered to remember and celebrate the life of the late retired Judge Jesse E. Eschbach. Eschbach died Oct. 25, one day before he would have turned 85 years old. He retired from the bench of the 7th Circuit U.S. Court of Appeals in 2000.

Dec. 12th - Superior Court Judge James Danikolas, Lake County's longest-serving judge, has died. He was 69. Danikolas, who is from St. John, died Saturday of congestive heart failure while on vacation in Key West, Florida.

Dec. 12th - The case of the *Knightstown Banner, LLC v. Town of Knightstown, et al.* was written up in the ILB on Nov. 11th, under the heading “*Question of making town's private settlement public argued before Court of Appeals.*” Today, the Court of Appeals has reversed the trial court and ruled in favor of the Knightstown Banner that the terms of the settlement at issue are a public record. Judge Patricia Riley wrote: “The overarching question of whether the settlement agreement drafted by an attorney retained by a public agency’s insurance company can be considered a public record, and therefore be subject to the

¹ Feeling nostalgic? You can relive 2005 again by reading last year’s column: <http://www.indianalawblog.com/documents/RG4.pdf>

requirements of APRA [Indiana Access to Public Records Act], presents us with an issue of first impression in Indiana and compels us to interpret the relevant provisions of the statute.”

Dec. 28th - Idea that landed with biggest thud of the year. "*Criticism continues for ISU law school proposal*" read the headline to an AP story quoting "an attorney and former member of the state's higher education commission ... Frank Bauer, who was a higher education commission members for 30 years, told Indiana State President Lloyd Benjamin that school should consider creating programs in health care instead of studying whether to create a new law school. 'Many feel we have too many lawyers already,' Bauer wrote in a letter to Benjamin. '... In my view, new programs, new campuses and new schools should be primarily driven by demands of the marketplace and not by the demands of a potential student body.'"

Dec. 29th - Judge David Hamilton ruled late yesterday, Dec. 28th, denying the motions to stay and to reconsider his Nov. 30th ruling in *Hinrichs v. Bosma*.

January 2006

Jan 2nd – The legislature will again be asked to ban serial meetings. The Evansville Courier & Press has an editorial today endorsing Sen. Bev Gard's reintroduction of her failed proposal from last session: The serial meeting is a tactic that government boards use to avoid public scrutiny in conducting the public's business.

Jan. 6th - More on: *Secrets of health care pact for legislators and staff may be revealed*: The lawmakers' retirement health benefit wasn't created by a single piece of legislation; the benefit came together via four separate bills passed over two years, with only the first bill describing the benefit lawmakers were creating.

Jan. 11th - A bill to end legislative branch health perks appears doomed; the state budget agency refuses to approve actuarial study of costs of perks

Jan. 19th - From the Louisville Courier Journal report: "Officials in Clark and Floyd counties overstepped their authority last year when they passed legislation blocking the construction of private hospitals, a judge ruled yesterday. In a 38-page ruling issued in Indianapolis, U.S. District Judge Sarah Evans Barker granted a permanent injunction against the construction moratoriums in both counties."

Jan. 20th - Wine-shipping bill moves to House floor: "House members on Thursday approved a tentative compromise dealing with the ability of in-state wineries to ship directly to consumers – but no one was exactly happy," reported the Fort Wayne Journal Gazette.

Jan. 24th - Bill to change appeals judge selection process passes out of House committee "It's hard to see this as anything other than a potential naked use of political power to remove five justices from the Court of Appeals and one justice from the Indiana Supreme Court," said Court of Appeals Judge John T. Sharpnack. "Just because you can do something doesn't mean you should." That according to a story in the Fort Wayne Journal Gazette.

Jan. 25th - HB 1419, to change the appeals court selection process, is dead. The majority committee report, with the new guts of the bill, was never filed.

Jan. 26th – "Senate President Pro Tem Robert Garton said yesterday that he's not keen on a proposal that would turn legislative redistricting duties over to a bipartisan commission," according to a report in the Louisville Courier Journal.

Jan. 31st - Supreme Court merges Clerk of Courts with Court Administrator. In a release issued late this afternoon, Chief Justice Randall T. Shepard announced: "Supreme Court Administrator Kevin S. Smith will permanently add the duties of Clerk of the Courts to his responsibilities as part of the transition of the Clerk's position from an elected position to an appointed one."

February 2006

Feb. 5th - Two columnists today focus on concerns about House video record.

Feb. 10th - On October 15th, 2005 the ILB had an entry quoting from an AP story that a "lesbian couple from Morgan County has gone to the Indiana Court of Appeals to win the adoption of a 1-year-old girl approved by a judge in one county but denied by a judge in another." Today the case was argued before the Court of Appeals.

Feb. 13th - Plan to link 400 courts takes another step. Today the Indiana Supreme Court has announced that it is rebidding its statewide case management system project, following on the announcement from late September of 2005 that it was terminating its long-time multi-million dollar contract with Computer Associates because of the failure to develop a system.

Feb. 15th - Appeals court to hear Lawrence utilities case. The Indianapolis Star reports today that "The Indiana Court of Appeals will hear an appeal of a Marion County judge's ruling that invalidated a private company's contract to operate Lawrence's sewer and water utilities. The appeal will halt the lawsuit in Marion Superior Court until the appellate panel determines whether Judge David J. Dreyer correctly ruled in November that the contract violated state bidding laws.

Feb. 18th - Serial meeting bill in danger again This year's effort, SB 89, has passed the Senate, 48-2, but has not yet been heard in House committee. (Last year's effort, SB 310, passed the Senate 49-0, and died in the House Local Government Committee.)

Feb. 19th - "Can police be liable in chases?" The Indianapolis Star reports today on a trial decision the Supreme Court has agreed to hear, bypassing the Court of Appeals. "The Indiana Supreme Court has agreed to hear a landmark case that could allow bystanders injured in high-speed police pursuits to sue for damages."

Feb. 20th - High school student prevails in suit Howard Circuit Court: Ryan Nees has prevailed in his suit against Kokomo Mayor Matt McKillip. Ryan had been denied access to the mayor's master list of e-mail addresses after receiving what he called a "spam" political e-mail from the mayor.

Feb. 23rd - The Indianapolis Star reports on Tuesday's Supreme Court ruling in the case of *Robert Trimble v. State of Indiana*: "A dog named Butchie is at the center of an Indiana Supreme Court ruling reaffirming the right of police to enter outdoor private property and seize evidence that is within public view. The court rejected Robert Trimble's claim that the warrantless 2003 police confiscation of a miniature Doberman pinscher violated Trimble's right against unreasonable search and seizure. The ruling overrides an Indiana Court of Appeals decision that had sided with Trimble."

Feb. 25th - Supreme Court grants transfer to Outback Steakhouse case. The Muncie Star-Press reports today that: "The Indiana Supreme Court decided this week to review a \$39-million civil judgment awarded to a Muncie couple who sued Outback Steakhouse. A Delaware Circuit Court jury in June 2003 found in favor of David and Lisa Markley, who were severely injured when their motorcycle was struck by a drunken motorist on July 21, 1997. The couple alleged the driver, William Whitaker of Albany, became intoxicated at the grand opening party at Outback's Muncie restaurant. Witnesses said alcoholic beverages were served free of charge or for as little as a dime each. The Indiana Court of Appeals upheld the \$39 million judgment last July.

Feb. 27th - Virginia Dill McCarty, *The Pioneer*. The 2006 Indiana Superlawyers arrived in the mail last week, containing an article titled "*The Pioneer: Virginia Dill McCarty has blazed trails for Indiana women all her life.*" Today Ms. McCarty continues to practice law, at Landman & Beatty.

March 2006

March 2nd - 7th Circuit denies stay of legislative prayer ruling.

March 11th - Federal Magistrate Judge V. Sue Shields to retire

March 13th - Indiana hearsay/confrontation clause case to be heard by U.S. Supreme Court. Next Monday, March 20th, the U.S. Supreme Court will hear oral arguments in *Hammon v. Indiana*, a 6/16/05 decision of the Indiana Supreme Court.

March 15th - The Indianapolis Star is reporting that: "Former federal Judge S. Hugh Dillin, 91, who was best known for his decisions on the Indianapolis school desegregation case, has died."

March 22nd - "*Winemakers raise glasses to new law*" is the headline to a story in the Brown County Democrat. Some quotes: "Brown County wine dealers are relieved, if not overjoyed, after a compromise between alcohol distributors and Indiana winemakers passed through the state legislature last week, ending a dispute that threatened to cripple the state's budding wine industry. In the words of Brown County Winery owner David Schrodt, Indiana's 32 wineries 'came out alive, but we sure got beat up.'"

March 22nd - "State will take most of couple's \$2 million verdict" is the headline to an AP story: "VALPARAISO, Ind. -- A couple whose home exploded following a natural gas buildup will receive a fraction of the \$2 million a jury awarded them in their lawsuit. The rest will go to the State. ... Jurors awarded the Ketchmarks more than \$700,000 in compensatory damages and ordered the utility to pay \$1.5 million in punitive damages. But a state law passed 11 years ago requires 75 percent of all punitive damages to be paid to the state, said Jack Kramer, one of the attorneys who represented the couple."

March 30th - The Indiana Supreme Court has reached a long anticipated decision in *Frank Nagy, et al. v. Evansville-Vanderburgh School Corporation*. "The question presented is whether the mandatory \$20 student services fee imposed on students enrolled in a school corporation violates Article 8, Section 1 of the Indiana Constitution. We conclude it does."

March 31st - The *Indiana Register* is now in Volume 29, meaning it is nearing its 30th year. But my understanding is that because of actions of the General Assembly and the Legislative Services Agency (LSA) over the past two sessions, the *Indiana Register* will never complete its 29th Volume. Since its inception in the late 1970s, the *Indiana Register* has been published as a monthly, paged, volume, similar in appearance to the *Federal Register*.

April 2006

April 2nd - Here is the new Indiana "Do Not Fax" law, HEA 1280, which hopefully will be as successful as the Indiana "Do Not Call" law. But don't turn your faxes back on just yet, the new law does not go into effect until January 1, 2007.

April 3rd - The Regions Bank Building (also known as One Indiana Square and the Indiana National Bank building), at Penn. and Illinois, was hit by a tornado last night. The building is the home of a number of Indianapolis law firms, and the Indiana State Bar Association.

April 6th - Chief Justice Randall T. Shepard and Associate Justice Frank Sullivan, Jr. issued a "Case Management System PNCO Update." The deadline for submitting proposals was 4 p.m., Friday, March 31. Fourteen proposals were received:

April 10th - The lead article in this week's edition of Indiana Legislative Insight begins: "At the end of June, the *Indiana Register* will cease to exist as you have known it for the past three decades. Beginning in the next fiscal year, it won't be – to steal an overused advertising phrase – your father's *Register* any more."

April 11th - "The Issue: Court says activity fee amounts to tuition. Our View: Shouldn't the same view apply to book rentals?" was the headline to an editorial yesterday in the Evansville Courier & Press. The decision referenced is, of course, *Frank Nagy, et al. v. Evansville-Vanderburgh School Corporation*.

April 12th – "U.S. Supreme Court Votes to Allow Citation to Unpublished Opinions in Federal Courts" Law.com is reporting: "The Supreme Court on Wednesday adopted a historic rule change that will allow lawyers to cite so-called unpublished opinions in federal courts starting next year. The justices' vote represents a major milestone in the long-running debate over unpublished opinions, the sometimes-cursory dispositions that resolve upward of 80 percent of cases in federal appeals courts."

April 12th - A number of papers this morning have stories about the suits against the Indiana Toll Road deal. The Evansville Courier & Press reports: "Wednesday midmorning, a group of seven Hoosiers and the Citizens Action Coalition filed a lawsuit in St. Joseph County asking for an injunction barring state officials from signing the lease or turning over the Indiana Toll Road and also asking that a judge void House Enrolled Act 1008, the new law that allows the administration to contract with private firms to run roads."

April 13th - "Gay couple wins adoption appeal" is the headline to an Indianapolis Star story about the Courts of Appeals ruling today in *In the Matter of Infant Girl W v. Morgan County FCS*. "In a split-decision today, the Indiana Court of Appeals quashed a Morgan County judge's efforts to halt the adoption of an infant girl by a same-sex couple. The court ruled that a Marion County probate court which approved the adoption by two Morgan county women, who have been in a committed relationship for more than 10 years, had the authority to make the decision. ... The adoption was not challenged on the basis of the

women's sexual orientation; rather that Indiana law prohibits simultaneous adoption by two unmarried individuals.”

April 14th - "*When wind hit, privacy flew out the window: Tower's tenants work to restore lost documents*" headlined the Star story: "When that fateful 70 mph wind cut through Downtown and made the Indiana Square building look like a block of Swiss cheese, it deposited more than just glass, vertical blinds and insulation on the streets below. Thousands of confidential papers fluttered to the ground, too, then blew for blocks. Internal memos, mismatched pages of litigation, printed e-mails, insurance documents, sealed medical bills and even part of someone's will were drifting in the streets and stuck in bushes after the storm. Most of the documents appeared to belong to law firms, including Krieg DeVault LLP and Tabbert Hahn Earnest & Weddle. But some could belong to accounting firms or professional services firms in Indiana Square."

April 15th - "*Law upheld: Voters need photo ID - Federal judge says plaintiffs failed to demonstrate hardship*" headlined the Indianapolis Star about the 127-page opinion by federal (SD Ind.) Judge Sarah Evans Barker, *Indiana Democratic Party v. Rokita*.

April 25th - "*Daniels wants Toll Road foes to post billions*" is the headline to a story today in the Fort Wayne Journal Gazette. "Gov. Mitch Daniels has asked a St. Joseph County judge to require citizens challenging the 75-year lease of the Indiana Toll Road to post a \$3.8 billion surety bond to protect the state from possible economic losses."

April 26th - Head of Indiana Criminal Justice Institute has been placed on paid administrative leave by Gov. Mitch Daniels

May 2006

May 1st - So you think you are automatically exempt from jury duty because you are old or drive a ferry boat? It is no longer so.

May 3rd - "*Senate leader ousted*" reports the Star: "COLUMBUS, Ind. -- Senate President Pro Tempore Robert D. Garton, one of the most powerful men in the state, has lost the seat he's held for 36 years." Garton was defeated in the republican primary.

May 9th - "*Media cameras going to court*" reports today's Evansville Courier & Press. "A Vanderburgh County courtroom will make history when it becomes one of the first trial courts in Indiana to allow news media cameras inside to record trials and hearings. Chief Justice Randall Shepard is scheduled to announce today that Vanderburgh Superior Court will be among 10 courts statewide to participate in the cameras-in-the-courtroom pilot project."

May 11th - The General Assembly makes law by enacting statutes; the Supreme Court makes law by writing opinions; the Governor makes law by issuing executive orders. The devil is in the details of the interactions between the three. For the April 2006 issue of *Res Gestae*, I wrote a column about executive orders, signing statements and vetos at both the federal and state level. The focus was on what they are, why they are important, and their accessibility. My conclusion was that these important documents are often inaccessible at the Indiana state government level.

May 12th - Gov. Mitch Daniels called for the firing of the Indiana Criminal Justice Institute director after an ethics investigation found funding irregularities including a family friend receiving a grant without the approval of the agency board.

May 16th - Indy City-County Council passes sex-offender ban, "one of the strictest ordinances of its kind in the nation. Some council members, however, said its toughness could spark a costly legal battle; child molesters caught near city playgrounds or other gathering places for children will be fined at least \$600" according to a Star story.

May 26th - Plaintiffs in toll road suit must post \$1.9 billion bond: "SOUTH BEND, Ind. (AP) -- The plan to lease the Indiana Toll Road to foreign investors cleared a major roadblock Friday. A judge ruled that a

legal challenge of the state's plan to lease the toll road to private investors for 75 years is a public lawsuit and ruled the plaintiffs must post a \$1.9 billion bond within 10 days to proceed. The amount is half of the \$3.8 billion a foreign company wants to pay up front to lease the road."

May 26th - Attorney Virginia Dill McCarty has died at age 81. "Virginia McCarty blazed a trail for female attorneys" the Indianapolis Star reports today; she was "the first female gubernatorial candidate in Indiana and the first woman in the nation to be appointed to a full term as U.S attorney."

May 31st - "INDIANAPOLIS (AP) -- Six sexual offenders including convicted child molesters and rapists sued the city Wednesday to block a new ordinance that bans them from coming within 1,000 feet of parks, pools, playgrounds and other sites when children are present."

June 2006

June 2nd - In its "*Cheers, Jeers and Tears*" column today, the Evansville Courier & Press takes note of yesterday's Court of Appeals ruling in the Bob Knight open door decision, writing: "The Indiana Court of Appeals has ruled that Indiana University trustees did not break state law when they met in small, separate groups to discuss the impending firing of men's basketball coach Bob Knight ... reports the Associated Press. The truth is, the IU trustees, and any other government boards that engage in 'serial meetings,' do so to avoid the law."

June 7th - Despite many rumors to the contrary, apparently neither the federal courthouse at Terre Haute nor the federal court in Lafayette are in danger of closure.

June 19th - U.S. Supreme Court wetlands decision today muddies waters. The Supreme Court ruled today in favor of John Rapanos, in *Rapanos v. U.S.*, by a vote of 5-4. Rapanos' suits have been in the courts for years.

June 19th - U.S Supreme Court decides Indiana "confrontation clause" case today. Under the title *Davis v. Washington*, the Supreme Court today handed down an opinion covering both that case and *Hammon v. Indiana*, dealing with hearsay and the confrontation clause. The AP reports: "By a 9-0 vote, justices ruled that a Washington man's right to confront his accuser was not violated because he could not cross-examine his ex-girlfriend, who claimed in a 911 call that he had assaulted her. In another case, out of Indiana, the justices ruled 8-1 that a police officer had crossed the line - from dealing with an emergency to conducting an investigation - when he questioned a woman about what her husband had done to her well after she had been assaulted."

June 20th - Judge seals records in French Lick casino dispute without hearing, Grace Schneider of the Louisville Courier Journal reports today: "The two companies that joined forces to build Indiana's 11th casino -- under construction in French Lick -- are embroiled in a lawsuit that has been sealed by a judge in Orange County. The lawsuit and a request for an injunction were filed by Cook Group Inc., a Bloomington medical-device manufacturer, against Lauth Resorts and Casinos LLC, its partner in the project. Details about the case couldn't be learned yesterday because Orange County Circuit Judge Larry Blanton agreed to seal the documents."

June 20th - Supreme Court affirms, 4-0, the trial court in toll road case. In today's 19-page opinion in *Bonney v. IFA*, written by Justice Boehm, the Court concludes that "the General Assembly intended the [public lawsuit] statute to apply to lawsuits such as this. We also conclude that no substantial issue is raised by the plaintiffs' three contentions that HEA 1008 violates the Indiana Constitution. ... Accordingly, we affirm the order of the trial court."

July 2006

July 3rd - Retroactive property tax relief to three Indiana University fraternities ruled unconstitutional in the case of *Alpha Psi Chapter of Pi Kappa Phi Fraternity, Inc. v. Auditor of Monroe County*. "The Indiana Constitution prohibits special laws which grant privileges to a few people that are not available to others," the court said in the 4-1 decision. "In this case (legislators) exempted three taxpayers, after the fact, from tax deadlines applicable to everyone else."

July 4th - Supreme Court requires reasons for setting aside a verdict. You've seen it often in television courtroom dramas -- plaintiff wins after a hard fought trial, only to have the judge set aside the jury's verdict. In *Thomas M. Weida v. Donald and Kathy Kegarise*, Chief Justice Shepard writes: "Setting aside a verdict because the trial court concludes that it is against the weight of the evidence is a weighty but well-recognized power of common law judges. Our rules require a judge who exercises this power to describe the reasons in some detail. When the trial court acts without giving reasons, the verdict should be reinstated on appeal."

July 7th - Niki Kelly reports this morning in the Fort Wayne Journal Gazette: "A dispute heard by the Indiana Court of Appeals on Thursday over million worth of fire trucks bought by Fort Wayne in 2004 could \$4.8 substantially alter long-standing public purchasing law. The crux of the issue is whether a disappointed bidder has standing – or the legal right – to sue." The case is *City of Fort Wayne v. Pierce Mfg., Inc.*

July 13th - My *Res Gestae* column for the July-August issue examines the Indiana General Assembly's recent move to eliminate the *Indiana Register*, and assesses the General Assembly's custodianship of the Indiana statutes. Just two issues short of completing its 29th volume, representing 29 consecutive years of publication, the familiar *Indiana Register* has been eliminated, in a move that will come as a surprise to most of Indiana's legal community and others reliant on the *Indiana Register* for information about Indiana's administrative rules.

July 17th - All six of the Indiana appellate court judges (five judges and one justice) whose terms expire on December 31st of this year have filed a request to have the question of their retention in that office placed on the November 2006 general election ballot. The filing deadline was July 15th.

July 21st - This story today from the NY Times: "Milberg Weiss Bershad & Schulman, an embattled class-action law firm that has been accused of paying people to serve as plaintiffs, may be required to turn over all its financial records since 1998 under an order released Thursday by an Indiana judge." At issue was Hamilton Superior Court 3 Special Judge Kim Van Valer Shilts' order.

July 28th – The Commission on Judicial Qualifications has filed judicial disciplinary charges against Judge Thomas Newman, Jr., Madison Superior Court #3.

July 31st - Judge unseals records in French Lick casino dispute today. "PAOLI, Ind. (AP) -- Lawsuits unsealed Monday reveal a bitter dispute between partners developing an Orange County casino and related projects."

August 2006

Aug. 1st - A number of stories today on the French Lick casino dispute, but they focus on the details of dispute, rather than the action of the judge in sealing the entire lawsuit, including the docket itself, for nearly two months, and his reversal yesterday of that action.

Aug. 4th - Exclusive. The Indiana Supreme Court, apparently late yesterday, denied transfer in the Morgan County same-sex adoption case, *In the Matter of Infant Girl W.*

Aug. 5th – The Indianapolis Star has a story today headlined: "*Challenge fails: Adoption by gay couples stands State supreme court declines to hear case.*"

Aug. 16th - "*Bad idea: Flipping off the judge*" Bob Kasarda reports today in the Munster (NW Indiana) Times: VALPARAISO | Jonathan Wilson faced no more than a fine Tuesday after failing to convince Porter Superior Judge David Chidester to throw out a speeding ticket. That is until Wilson reacted to the unfavorable verdict by first flipping off the judge with his middle finger and then calling him an obscene name. Wilson, 31, of San Pierre was hauled off to jail and ordered held until he writes a letter of apology to Chidester."

Aug. 18th - Indiana enacted its own public breast-feeding law three years ago -- Indiana Code 16-35-6-1 -- stating that "a woman may breastfeed her child anywhere the woman has a right to be."

Aug. 19th - Justice Boehm's 10 years on Supreme Court marked. Susan Guyett of the Indianapolis Star's "Talk of the Town" column reported: "Two former law clerks, Paul Jefferson and Deborah Pollack-Milgate, who are now with Barnes & Thornburg, were among the tribute ringleaders. A PowerPoint presentation featured a bespectacled, judicial robe-wearing action figure going about the day at the Statehouse in genuine Bohemian fashion. The tribute also included a few examples of Boehm's unique style and humor bubbling up in a few court decisions."

Aug. 23rd - "Conference of state justices fears issue-based political campaigns sap public confidence in the judiciary" is the subhead to a Legal Times story. "Voicing 'grave concern' over increasingly partisan and costly campaigns, the Conference of Chief Justices -- representing the top jurists in all 50 states, the District of Columbia, and U.S. territories -- voted Aug. 2 on measures to emphasize the unique nature' of judicial elections."

Aug. 23rd - It is not news that the Court of Appeals issued 15 NFP opinions today, but these have been posted. The question is -- does this indicate change in policy, or was it a posting error? The ILB is attempting to find out. More: The ILB has learned that this is a Change in Policy. With permission. I am posting a message that I received earlier today from James S. Kirsch, Chief Judge, Court of Appeals of Indiana, in answer to the question "Does this [posting of 15 NFPs] indicate a change in policy, or was it a posting error? The ILB is attempting to find out."

Dear Marcia, The internet posting of our not-for-profit opinions which you noticed today is the result of a change in policy, not inadvertence. This change comes about after extended study and debate which was prompted to a significant degree by a number of postings in The Indiana Law Blog. Thank you for both raising the issue and contributing to the debate.

Aug. 23rd – In *Bruce Jones v. Martha Womacks* the Indiana Court of Appeals ruled that the petitioning process used to determine local support for schools to borrow money through bonds is unconstitutional because it only includes property owners. But the Court also said that its ruling would take effect after the next legislative session, thereby giving the Indiana General Assembly time to change the law to include nonproperty owners.

Aug. 25th - The Fort Wayne Journal Gazette has an editorial today on an apparently unintended result of the deeper jury pool that should be viewed as a benefit - "More young adults are serving on juries."

Aug. 29th - The National Law Journal has a long story today titled "*Exacting Easterbrook to Be Chief of 7th Circuit.*"

Aug. 30th - More than 8,000 Hoosiers stiffed by their health plan could share in an \$18 million malpractice judgment made Monday against the Indianapolis law firm that represented the plan, according to the Indianapolis Star. "The verdict, by a Marion Circuit Court jury after a six-day trial, amounts to a potentially crippling financial blow for the 43-year-old Eastside firm Fillenwarth Dennerline Groth & Towe, known for its labor law practice."

September 2006

Sept. 5th - 7th Circuit to hear oral arguments in legislative prayer case. The Indianapolis Star reports that the Indiana House of Representatives will soon start raising money to help pay for the cost of appealing a federal judge's decision barring prayers specific to any particular religion, including Christianity, in the legislature.

Sept. 5th - 7th Circuit upholds Michigan City ban on park use by convicted child molester in *Brown v. Michigan City*.

Sept. 6th – From a Fort Wayne Journal Gazette report on yesterday's Court of Appeals ruling in the case of *City of Fort Wayne v. Pierce Manufacturing*. "The city of Fort Wayne won a legal victory Tuesday when

the Indiana Court of Appeals ruled a company that lost a bid for \$4.8 million worth of fire trucks had no legal standing to sue.” [Note: A petition to transfer has been filed.]

Sept. 6th - Journalist and Judge Honored by Indiana Judges' Association. According to a press release, “Marcia J. Oddi, publisher of The Indiana Law Blog, will receive the media award. The Indiana Law Blog is a web log devoted to providing information on Indiana court decisions and other legal developments. Judge David Chidester of Porter Superior Court nominated Ms. Oddi for providing citizens with an up-to-date capsule of all matters involving Indiana law. Ms. Oddi has published The Indiana Law Blog since 2002.

“Judge Mary Beth Bonaventura of Lake Superior Court- Juvenile Division will receive the judiciary award. She was nominated by Magistrate Charlotte Peller and Chief Probation Officer Diane Weiss Bradley of Lake Superior Court for her efforts to educate young people about the reality of juvenile delinquency and juvenile court. Judge Bonaventura was the sole judge featured in a 2005 MTV documentary series called ‘MTV Juvies.’”

Sept. 7th - More today on school expulsion decision and its implications. On August 17th the ILB had an entry on a 2-1 Court of Appeals decision in early July, *Logansport School Corporation v. P.F.*, and its implications. Today the Fort Wayne Journal Gazette reports: “School districts across Indiana are changing their policies on how school boards handle the appeals process from students who have been expelled.”

Sept. 7th - Senior Judge Wesley W. Ratliff, Jr. dies. He was born September 21, 1925 in Knightstown, Indiana and graduated from Knightstown High School. He served in the Pacific during WWII from 1943-1945 with the US Navy. He attended Ball State University and graduated from Valparaiso University School of Law in 1950.

Sept. 8th – The 7th Circuit heard oral arguments yesterday in the legislative prayer case, *Hindrichs v. Bosma*. [A decision had not been issued, as of 12/27/06.]

Sept. 8th – Marion County Judge Jane Magnus-Stinson to replace Judge V. Sue Shields as U.S. District Court Magistrate .

Sept. 12th – The AP is reporting that Indiana's attorney general will not fight a court decision that said the state's process for determining public support for school bond issues is unconstitutional because it is limited to property owners.

Sept. 14th - U.S. Supreme Court to begin making free same-day transcripts available.

Sept. 18th - Janet Blue, 1933-2006. The Indianapolis Star today contains a tribute to Janet Blue, the Commissioner of the Indiana Court of Appeals, who died late last month.

Sept. 21st - Communities seek to regulate outdoor wood-fired boilers. From the NWI Times - PORTAGE | Outdoor wood-burning furnaces may provide a good alternative to rising home heating fuel costs, but some local officials worry they could harm the environment and human health.

Sept. 22nd - Court of Appeals rules against Attorney General in the Planned Parenthood records case. In *Planned Parenthood of Indiana v. Steve Carter and Allen K. Pope*, reversing the trial court.

Sept. 25th - Results of poll of Indiana attorneys on retaining the 5 appellate judges and 1 justice up for confirmation this year. “The Improvements in the Judicial System Committee of the Indiana State Bar Association (ISBA) has completed its compilation of the 2006 Judicial Retention Poll responses. Results indicate overwhelming support, by ISBA members, of the Indiana Supreme Court justice and Indiana Court of Appeals judges seeking retention.”

October 2006

Oct. 4th - In *Marshall Highler v. State of Indiana*, Justice Boehm writes: "We hold that the use of a peremptory challenge to strike a juror because of the juror's race, gender or religious affiliation violates the juror's right to equal protection of the laws. The juror's affiliation is to be distinguished from religious beliefs that prevent the juror from following the law. The juror's occupation, to the extent it may indicate a predisposition and is not a pretext, is a permissible ground for a peremptory strike."

Oct. 5th - Federal Court Rules Indianapolis Sex Offender Ordinance Unconstitutional: In a 23-page ruling, federal district court Judge Richard L. Young grants the plaintiffs' request for a preliminary injunction. The court finds that the ordinance is unconstitutionally vague and violates due process, that it violates both the double jeopardy and *ex post facto* clauses of the US Constitution, and that it violates the plaintiffs' voting rights.

Oct. 8th - "Indiana felons must provide DNA."

Oct. 15th - The Indiana Law Blog's Resource Page for the 2006 Judicial Retention Election is now close to completion. The purpose is to provide information to those seeking to learn more about the judges and justice up for retention on the Nov. 7, 2006 ballot. Justice Frank Sullivan Jr. of the Indiana Supreme Court and Chief Judge James S. Kirsch, Judge Terry A. Crone, Judge Ezra H. Friedlander, Judge Edward W. Najam Jr., and Judge Patricia A. Riley of the Indiana Court of Appeals are up for a "yes-no" vote on whether they should hold their offices for another 10 years

Oct. 18th - The 7th Circuit hears Indiana's voter ID case today.

Oct. 30th - "Gary's gun lawsuit dodges a bullet: Lawsuit is one of three remaining nationwide" reported the Gary Post-Tribune on a ruling by Lake Superior Court Civil Division 5 Judge Robert Pete: "The city's lawsuit against gun makers and local dealers received a boost this week when a Lake County judge ruled a year-old federal law shielding gun makers from lawsuits is unconstitutional."

November 2006

Nov. 1st - Supreme Court denies transfer in Bob Knight open door case: Via the AP: "The state Supreme Court has declined to hear a lawsuit accusing Indiana University of violating the state's open-meetings law in the days leading up to the firing of former basketball coach Bob Knight. That brings the lawsuit filed by 46 fans six years ago to a dead end, with the university's actions being upheld."

Nov. 2nd - The Louisville Courier Journal reports that the "Indiana Supreme Court is tentatively scheduled to hear oral arguments Dec. 14 in a fee dispute between the Clark County Council and the county's judges. At issue is who controls hundreds of thousands of dollars worth of probation user fees collected by the courts."

Nov. 4th - Justice O'Connor confesses second thoughts about *Republican Party of Minnesota v. White*, according to a report in the San Francisco Chronicle: "Former Supreme Court Justice Sandra Day O'Connor told a San Francisco audience Friday that judges are under political attack nationwide, and [the] ruling she endorsed four years ago is partly to blame."

Nov. 6th - "Marion Superior Court is set for '07: You'll elect them Tuesday, but no matter whom you pick, all 20 candidates will win," the Indianapolis Star editorializes today in favor of a merit-based selection process: "Buried near the end of the ballot Tuesday will be 10 Republican and 10 Democratic Party candidates for Marion County Superior Court judge. Regardless of voters' decisions, all 20 will wind up on the court. The rigged contest was decided months ago."

Nov. 6th - The Indiana Supreme Court has selected Tyler Technologies, Inc., to supply and install a new computer system that will manage cases for Indiana trial courts, Chief Justice Randall T. Shepard announced today. The selection followed a lengthy competitive procurement, Shepard said, and is contingent on negotiating a satisfactory contract with Tyler.

Nov. 8th - The AP reports today: "Indiana voters by wide margins chose to keep a state Supreme Court justice and five Court of Appeals judges on the bench. While most judges at the city and county level are elected directly in Indiana, the five Supreme Court justices and 15 judges on the Court of Appeals are appointed to two-year terms by the governor after being nominated by a judicial commission."

Nov. 9th – Ruling in *Outback Steakhouse v. Markley*, the Supreme Court vacates the \$39 million judgment and orders a new trial.

Nov. 14th - Indiana Supreme Court loses federal suit filed in the Northern District of Indiana challenging the provisions of the Indiana Code of Judicial Conduct that prohibit state court judicial candidates from responding to a questionnaire asking their views on legal and political issues - *Indiana Right to Life v. Shepard*. [See Nov. 4th entry above re *Republican Party of Minnesota v. White*]

Nov. 16th - Senate's health care perks to change somewhat. There are a number of stories today on new Senate Pro Tem David Long's announcement re the Senate's life time health care plan.

Nov. 18th - The ILB communicated with the Public Access Counselor and the Commission on Public Records about whether the House video archives are "public records" that cannot be summarily destroyed at the end of each session. I learned that if the videos are the types of records that fall within a "record" under IC 5-15-5.1-1 (and the law does explicitly cover both "photographic or chemically based media" and "magnetic or machine readable media"), then they must be maintained for the prescribed period of time and may only be destroyed in accordance with the records retention schedule. But only if the General Assembly elects to be covered by the Indiana public records law – i.e. it did not write the law to apply to itself.

Nov. 22nd – Court of Appeals issues *Jesus Arrieta v. State of Indiana* (interlocutory appeal from the Clark Superior Court, Judge Blau), a 2-1 decision concerning whether a non-English-speaking criminal defendant is entitled to the appointment of an interpreter at government expense whether or not the defendant has established indigency. The majority wrote: "Finding that this is a matter best left to the legislature and that nothing in statutory or constitutional law requires a trial court to pay for an interpreter for a defendant who has not established financial need, we affirm the judgment of the trial court." From the dissent: "[S]ome rights transcend fiscal considerations and are so important as to be considered fundamental. ... I would reverse the decision of the trial court and order it to appoint an interpreter to serve Arrieta in all future court-related proceedings in this cause. I would also hold that if Arrieta is eventually convicted, the trial court may, in its discretion, order Arrieta to pay the costs of his prosecution, including the cost of the interpreter."

Nov. 25th - East Chicago case could resolve dispute in the federal courts re definition of money laundering.

Nov. 27th - "Wineries 'live with' new shipping rules."

Nov. 28th - Today's decision, *Porter County Sheriff Department v. Rita J. and Douglas Guzorek*, a 3-2 vote, with Justice Boehm writing the majority opinion and Chief Justice Shepard writing the dissent, presents very strong views on both sides. For instance, from the dissent: "Justice Boehm has properly rejected Porter County Sheriff's Department's various claims about timing and failure of notice under Rule 15(c). His assessment of what constitutes a 'mistake of identity,' however, is against the weight of federal and Indiana authority. I see no reason why Indiana should be an outlier on this question, and the majority opinion does not undertake to provide a reason for placing us against the mainstream."

Nov. 29th – 7th Circuit Judge Posner in a case out of Wisconsin, *Smoot v. Mazda Motors*, asks rhetorically: "Are we being fusspots and nitpickers in trying (so far with limited success) to enforce rules designed to

ensure that federal courts do not exceed the limits that the Constitution and federal statutes impose on their jurisdiction?"

Nov. 30th – Re the above, a reader writes: “The Mazda/Smoot decision is a scary warning to all federal appellate practitioners. Also scary is the 20 minute audio of the oral argument, in which Judges Posner and Easterbrook flay both counsel like they were pulling the wings off of a fly.”

December 2006

Dec. 1st – From the Indianapolis Star: “Indiana Attorney General Steve Carter has conceded a longstanding legal battle with Planned Parenthood of Indiana over minors' reproductive health clinic records. On Thursday, representatives from Planned Parenthood and Carter's office signed a settlement agreement worked out after a Sept. 22 Indiana Court of Appeals ruling said a minor's right to privacy trumps the state's desire to search for evidence of abuse.”

Dec. 2nd – New federal rules permitting the citation in briefs of opinions, orders, or other judicial dispositions that have been designated as "not for publication," "non-precedential," or the like and superseding limitations imposed on such citation by circuit rules went into effect Dec. 1st. Also rules authorizing a court to require by local rule that cases be filed electronically.

Dec. 2nd - "*Exodus of state staff triggers ethics rule.*" The Fort Wayne Journal Gazette has an important story today on what ethics rules/laws apply to members of the Daniels administration who are now returning to the private sector.

Dec. 6th - *Judge faces drunken driving charge*" is the headline to an Indianapolis Star story reporting that John F. Hanley, 51, who was elected last month to serve his second consecutive six-year term on the Marion County Superior Court bench, was arrested late Monday after police stopped his Chrysler Concorde in the 4900 block of North Keystone Avenue. Hanley, who is the former chair of the state's Alcoholic Beverage Commission, presides over Civil Court 11.

Dec. 7th – A later Star story reports “A Marion Superior Court judge accused of drunken driving this week likely will face a reprimand from the Supreme Court in the coming months but will not be taken off the bench.”

Dec. 8th - The Fort Wayne Journal Gazette reports: “A Fort Wayne woman shot while waiting in line at the downtown Fort Wayne Taco Bell drive-through six years ago can sue the restaurant, claiming lax security, according to an Indiana Court of Appeals ruling. A Wells County judge originally ruled against Sonya Winchell, but the appellate panel found the restaurant owed her a duty to ensure her safety and a jury should decide whether Taco Bell met that obligation.” The opinion in *Sonya Winchell v. Remco Guy, et al.*

Dec. 8th - More on yesterday's Court of Appeals ruling in *Daniel H. Raess, M.D. v. Joseph E. Doescher* The Indianapolis Star reports: “A workplace bullying judgment against an Indianapolis heart surgeon that drew national attention last year was struck down Friday by the Indiana Court of Appeals.”

Dec. 12th - *Illinois Judge Refused Post-Wreck DUI Test While Another Judge Ditched Beer.* From the AP: “St. Clair County, Ill.'s chief judge has temporarily stepped down pending the outcome of charges against another judge who allegedly was driving drunk when the two were involved in a wreck that injured another motorist. Chief Judge Jan Fiss was a passenger Dec. 3 in newly elected Circuit Judge Patrick Young's sport utility vehicle when it collided with a pickup truck as the judges were returning home from a St. Louis Rams game, police said. Young, 58, was charged with driving under the influence after refusing a sobriety test. Fiss, who police say was seen dumping out an open beer and trying to hide a beer can after the wreck, was not charged.

Dec. 12th - Judge Sullivan retiring from Court of Appeals. Judge Patrick D. Sullivan is the only member of the Court who originally was elected to office; his tenure precedes the 1970 judicial amendment which made Court of Appeals judges and Supreme Court justices appointed positions.

Dec. 13th – *Shepard reappointed chief justice of Indiana for 5th five-year term*: “The Hon. Randall T. Shepard was re-appointed to a new five-year term as Chief Justice of Indiana following a unanimous vote of the Indiana Judicial Nominating Commission on Wednesday.”

Dec. 13th – The Indianapolis Star reports today that the Lawrence water utilities case may be settled: “As the FBI closed its investigation without charges, Lawrence and Citizens Gas & Coke Utility officials announced they want to form a public charitable trust that would own and operate Lawrence's water and sewer utilities. The proposed agreement with Citizens Gas would lead to a reduction in the combined water and sewer rates that nearly 15,000 residential and commercial customers pay by an average of 20 percent, saving ratepayers \$3 million a year.”

Dec. 15th - The Supreme Court heard oral arguments yesterday in *Clark County Council v. Donahue*, regarding the constitutionality of the appropriation of the courts' probation fees by the county government.

Dec. 17th – The NY Times reports today on wood-fired outdoor boilers: “Neighbors say that they create smoke so thick that children cannot play outside, and that it seeps into homes, irritating eyes and throats and leaving a foul stench. They have spawned a rash of lawsuits and local ordinances across the country. A report last year by the New York attorney general's office found that they produce as much particle pollution in an hour as 45 cars or 2 heavy-duty diesel trucks. ... And next month, the Environmental Protection Agency expects to issue guidelines for states to follow in regulating the use of wood boilers. The industry, too, is working with the agency on new standards for boilers.”

Dec. 19th – The Supreme Court has censured Judge Newman, Jr., Judge of Madison Superior Court No. 3. “Judge Thomas Newman's failure to do his duty has brought the judiciary into disrepute. ... As a result of Respondent's failure to execute an appropriate order for Dawson's release and to provide proper supervision and instruction to his court reporter, Dawson unnecessarily spent over one year incarcerated with the DOC and one year on supervised parole.”

Dec. 20th - No surprises here: Fireworks law change proposed for the 2007 General Assembly.

Dec. 20th - *Insurer Groups, State Trade File Joint Amicus with Supreme Court*. The case, *State Farm Mutual Automobile Insurance Company v. Jakupko*, was decided by the Indiana Court of Appeals on November 17, 2006. According to the AP: “‘A claimant's direct involvement in the accident requires that a negligent infliction of emotional distress claim accompanied by physical manifestations be treated in the same manner as any other bodily injury claim,’ Judge Edward W. Najam Jr. wrote. The ruling held that the \$100,000 ‘each person’ rule applied, subject to the \$300,000 per accident limit, so the Jakupkos were entitled to the additional \$200,000.”

Dec. 21st – New Supreme Court rule on allowable fonts in briefs takes effect Jan. 1, 2007.

Dec. 23rd - 156-year-old Orange County Courthouse to get elevator.

Dec. 24th - *Judge orders school to reinstate teddy-bear attack filmmakers*. Via the AP: KNIGHTSTOWN – Two students expelled for making a movie in which evil teddy bears attack a teacher must be allowed to return to school, [U.S. District Judge Sarah Evans Barker] has ruled.”