

Judge Bradford, cont.

from Indiana University School of Law-Indianapolis in 1986. He is the Court of Appeals' liaison to the Indiana Judges Criminal Instructions Committee, which provides guidance to judges on jury instructions in criminal cases.

He has taught Indiana Continuing Legal Education Foundation trial practice seminars for more than 10 years and also teaches Forensic Science and the Law at IUPUI, where he is an adjunct instructor.

He and his wife, Sam, a full-day kindergarten teacher, have five adult children.

Judge Crone, cont.

Court by election in 2006.

He is married and has three daughters – a practicing attorney, an anesthesiologist and a doctor of psychology.



Court of Appeals takes lead in pilot transcription projects

Indiana courts have launched an ambitious project to determine if audio/visual recordings should replace paper transcripts of trial court proceedings on appeal.

A parallel project will explore the use of professional transcription services, instead of court reporters, to prepare traditional transcripts for appeal.

The goal is faster, cheaper and more efficient preparation of transcripts, which often take months to prepare at significant cost. The Indiana Supreme Court authorized both projects in separate orders issued last year.

The audio/visual project will involve three Indiana trial courts and a single panel of Appeals Court judges. The panel hopes to consider 45 cases on appeal from the trial courts by the end of this year, relying solely on audio/visual recordings to review each trial court's proceedings. The Appeals Court panel will consist of

Fast facts about the Court of Appeals of Indiana

- The Court of Appeals observed its centennial anniversary in 2001.
- The Court hears 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.
- Including judges serving senior terms, 135 judges have served the Court since its inception. Their photos are displayed against the north wall of the Statehouse on the fourth floor. Judge James B. Black (1838-1916) was the Court's first chief judge.
- Because the Indiana Constitution provides "an absolute right to one appeal," the Court of Appeals considers about 2,300 cases each year. The Indiana Supreme Court need not consider every appeal, so it decides about 100 cases per year.
- Eight women and three African Americans have served on the Court. Current Chief Judge Margret G. Robb is the Court's first female chief judge.
- The court decides most cases without holding oral argument. In 2012, for example, the court issued 2,143 majority opinions and heard 78 oral arguments.
- The court hears and decides about twice as many criminal cases as civil cases each year.
- The Court of Appeals affirmed trial court decisions in 80 percent of its cases in 2012. The affirmation rate was 86 percent of criminal cases; 88 percent of post-conviction relief petitions; and 64 percent of civil cases.

Judges James S. Kirsch, Melissa S. May and Cale J. Bradford.

The three trial courts and the case types they will generate are Allen Superior Court (civil); Marion Superior Court 6 (criminal); and Tippecanoe Superior Court 3 (termination of parental rights).

Each is equipped with audio/visual recording equipment installed by a Kentucky firm with extensive A/V recording experience in that state's courts.

A Supreme Court order dated Sept. 18, 2012, details the "Indiana Court Reporting Pilot Project for Audio/Visual Recordings." Among other things, the order covers the selection of pilot project cases; how parties in the selected cases will be notified; use of a "trial event log" to cite to case proceedings; and the process for submitting the A/V record on appeal.

The order also says the recording and all copies "shall be deemed confidential and not subject to public access until after the court proceed-

ing has been concluded and all appeals have been exhausted."

The professional transcription pilot project takes a different route to speedier transcript production.

According to a Supreme Court order of Nov. 18, 2012, transcripts in select cases from select counties will be prepared by professional transcription companies within 30 days of the filing of a notice of appeal.

Current appellate rules allow 90 days for transcript preparation, but also allow for extensions of time.

The pilot will involve 10 appeals from five counties – Hamilton, Lake, Madison, Tippecanoe and Vanderburgh. The work will be divided between two professional transcription companies that already provide similar services in other states.

A third pilot project is planned but not yet authorized by the Supreme Court. It will explore the use of digital filings for briefs, transcripts and other documents in cases on appeal.

COURT OF APPEALS OF INDIANA ORAL ARGUMENT AT A GLANCE VALPARAISO UNIVERSITY LAW SCHOOL

Vincennes University, et al v. Sparks

CIVIL LAW ISSUES:

- Whether the issue was unambiguous and should have been decided on summary judgment.
- Whether the trial court erred by denying Appellant's motion for a directed verdict.
- Whether there was sufficient evidence to support the jury verdict.

ORAL ARGUMENT:

Tuesday, March 26, 2013
11 a.m. CDT

APPEAL FROM:

Knox Superior Court
The Honorable
Dean A. Sobecki, Judge

Case Synopsis

Appellee Daniel Sparks began working for Vincennes University in 1979 as the men's basketball coach, athletic director, and professor of physical education. He became a tenured employee in 1982.

In 2003, Sparks recruited a student from South Carolina. The student did not obtain enough credits to graduate from high school, so he "transferred" his credits to a school in Philadelphia, which issued him a transcript. An assistant coach also provided this student with an Indiana address to put on his application.

Upon investigation, University staff determined that the student had not graduated high school, had not attended the school in Philadelphia, had never lived in Indiana, and did

not have any relatives who lived in Indiana.

Sparks and his assistant coach were called to a meeting concerning the student's application. The assistant coach admitted that he had given the student an in-state address in order to increase the number of students who could receive a basketball scholarship.

At a subsequent meeting, Sparks and his assistant coach were informed that the disciplinary process would be initiated unless they agreed to new terms of employment, which were outlined in a memorandum.

The new terms were that Sparks would not receive a pay increase for the following academic year, that he would be subject to a "zero tolerance policy," that he would forfeit his tenure, and that he would cease to serve

as athletic director.

Sparks agreed to the new terms of employment and provided the University with a letter acknowledging the agreement. In this letter, he echoed the assistant coach's statement that they were trying to stretch the basketball program's scholarship money.

Although the agreement stated that the University would provide Sparks with the terms of the zero tolerance policy, it never did so.

In July 2004, Sparks received a letter informing him that his contract would not be renewed for the 2005-2006 academic year. Thereafter, Sparks filed a complaint against the University alleging breach of con-

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Case synopsis, cont.

tract and promissory estoppel. He later amended the complaint to substitute a fraud claim for the promissory estoppel claim.

Sparks and the University both filed motions for summary judgment.

Sparks argued that the University had to continue to employ him as long as he did not violate the zero tolerance policy. Sparks claims that his interpretation of the agreement is supported by statements made to him by University officials.

The University argued that because Sparks had forfeited his tenure, he was on a year-to-year contract, and the University was free to renew or not renew his contract for any reason.

Attorneys for the Parties

Appellant’s Attorney

Maggie L. Smith has been recognized as one of *The Best Lawyers in America*® in the field of appellate practice. She has been involved in hundreds of appeals and has represented businesses, individuals, and groups in all types of appellate proceeding at every level of the state and federal appellate courts.

Prior to entering private practice, she served as a judicial law clerk with Chief Justice Brent E. Dickson of the Indiana Supreme Court and was an Adjunct Professor of Law at Indiana University, teaching legal writing and reasoning and appellate advocacy.

Maggie has been actively involved in drafting the Indiana Appellate Rules, is a leader in the state and national appellate practice communities, and is a frequent presenter on appellate topics. Among her many legal memberships and affiliations, she was Chair of the Indiana State Bar Association Appellate Practice Section 2010-2011 and serves on the Indiana Supreme Court Committee on Rules of Practice and Procedure.

She earned her law degree *magna cum laude* from the University of Arizona James E. Rogers College of Law in 1994, and then moved to Indiana almost 20 years ago to marry the love of her life, fellow attorney Kevin Smith. Maggie loves spending time with her husband and two children, especially if it involves

The University claims that the zero tolerance policy would have allowed it to terminate Sparks’ employment during the academic year for cause; however, the University does not claim that Sparks violated the zero tolerance policy.

The trial court denied both motions for summary judgment, and the case proceeded to a jury trial.

After the close of Sparks’ case-in-chief, the University moved for a directed verdict, which the trial court denied.

At the close of evidence, Sparks withdrew his fraud claim, and only the breach of contract claim was submitted to the jury.

The jury returned a verdict in Sparks’ favor, which the University now appeals.

being outdoors. She is also passionate about serving her community and tries to volunteer locally, nationally, and internationally whenever possible.

Appellee’s Attorney

James Piatt represents individuals and businesses that have been physically or financially injured. Mr. Piatt graduated *cum laude* from the University of Notre Dame in 1999 and obtained his J.D., *cum laude*, from the Indiana University Robert H. McKinney School of Law in 2009, where he served on the Indiana Law Review and was inducted into the Order of the Barristers.

Prior to and during law school, Mr. Piatt worked in professional sports. He is a native of Monticello, Illinois.

As an associate attorney at Price Waicukauski & Riley since 2010, Mr. Piatt has tried two cases to verdict (*Daniel E. Sparks v. Vincennes University*, Knox County Superior Court, No. 42D01-0705-PL-022; and *State Farm Fire & Casualty Company v. Joseph Martin Radcliff and Coastal Property Management LLC, a/k/a CPM Construction of Indiana*, Hamilton County Superior Court, No. 29D01-0810-CT-1281)

He is an active member of the Indiana State Bar Association and the Indiana Trial Lawyers Association. Mr. Piatt is admitted to practice in all Indiana state and federal courts.

Case names, numbers

Every case before the Court of Appeals has a unique name and number that is governed by standard practice (case name) or formal rule (case number).

Appellant v. Appellee is the typical format for case names, as in *Ripps v. State*, a criminal case that was assigned the number 15A01-1109-CR-436. Other formats also occur, depending on the nature of the case, but *Appellant v. Appellee* is most common.

The appellant is the person appealing a trial court decision—usually the person who lost at trial. The appellee is the party against whom an appeal is brought—usually the party that prevailed in the trial court.

Appeals case numbers are governed by Indiana Court Rule 8.1 (Uniform Appellate Case Numbering System).

In our example (15A01-1109-CR-436), you’ll notice there are four groups of numbers/letters, separated by hyphens. The groups form as follows:

First group (15A01)

■ The first two digits indicate the county where the case originated. Each of Indiana’s 92 counties has a two-digit identifier, starting with 01 for Adams County, 92 for Whitley County, and 93 for state agencies. In our example, 15 means Dearborn County.

■ “A” means the appeal was filed with the Court of Appeals. (S would mean Supreme Court and T would mean Tax Court)

■ The next two digits indicate the Appeals Court district where the case originated. In this case, 01 means the First District, which covers 53 counties in southern Indiana

Second group (1109)

The second group indicates the year and month of filing, in that order. In this case, the appeal was filed in September 2011.

Third group (CR)

This group indicates the type of case, such as criminal, civil, post-conviction relief, guardianship, etc.

Fourth group (436)

This number indicates the order in which a particular type of appeal was filed. In this case, *Ripps v. State* was the 436th criminal appeal (CR) filed in 2011.

Today’s Panel of Judges

The Honorable
Terry A. Crone
(St. Joseph County)

Terry A. Crone was appointed to the Court of Appeals March 8, 2004 by Governor Joseph E. Kernan. Judge Crone was raised in South Bend. He graduated cum laude from DePauw University with a double major in political science and history in 1974 and graduated from Notre Dame Law School in 1977.

Judge Crone practiced law for nine years, concentrating in areas of civil practice, and served as the St. Joseph County Attorney from 1981 to 1986. In 1986, he was appointed Magistrate of the St. Joseph Circuit Court, where he served until his appointment as Judge of the St. Joseph Circuit Court in 1989.

Judge Crone is a past President of the St. Joseph County Bar Association and a former member of the Board of Managers of the Indiana Judges Association, the Supreme Court Committee on Character and Fitness, and the Alternative Dispute Resolution Committee of the Indiana Judicial Conference.

Judge Crone is a past Chair of the Appellate Practice Section of the Indiana State Bar Association and is a member of the St. Joseph County, Indianapolis, Marion County, Indiana State and American Bar Associations, the American Judicature Society, and the Phi Delta Phi Honorary Legal Society.

Judge Crone is a frequent speaker at legal education programs. He helped found a program in South Bend to familiarize minority high school students with the law and related fields and was a founding member of the South Bend Commission on the Status of African-American Males and the St. Joseph County Coalition Against Drugs.

As Circuit Court judge, he also initiated the first Spanish-speaking program for public defenders in St. Joseph County.

Judge Crone was retained on the

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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, 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.

The Honorable
Cale J. Bradford
(Marion County)

Cale J. Bradford has broad experience in both the state and federal legal systems, including service as a Marion County deputy prosecutor, a public defender, a federal prosecutor, a trial court judge and appellate court judge. He also has six years’ experience in private legal practice.

He was appointed to the Court of Appeals of Indiana by Gov. Mitch Daniels and took his seat on Aug. 1, 2007. Since then he has participated in more than 2,000 appellate decisions and 80 oral arguments and has written more than 700 majority opinions.

Before joining the Appeals Court, he served the people of Marion County for more than 10 years as Judge of the Marion Superior Court, including two terms as Presiding Judge.

In that time, Judge Bradford chaired the Marion County Criminal Justice Planning Council, a group of local elected and appointed officials who recommended ways to improve the county’s response to criminal justice problems, including jail crowding, staffing and budgets. Those efforts led to the end of 30 years of federal oversight of the Marion County Jail.

He also led the Annie E. Casey Foundation Juvenile Detention Alternative Initiative to create responsible alternatives to juvenile incarceration.

Before that, he worked two years in the Marion County Prosecutor’s Office, overseeing a staff of more than 100 attorneys. As an Assistant United States Attorney for the Southern District of Indiana for five years, he prosecuted major felony drug trafficking cases. He engaged in private law practice from 1986 to 1991, and has served as both a deputy prosecutor and public defender.

A native of Indianapolis, Judge Bradford received a B.A. in labor relations and personnel management from Indiana University-Bloomington in 1982 and his J.D.

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