

# THE YEAR IN LAW 2006

by Kevin Underhill<sup>1</sup>

- Jan. 3:** Former lobbyist Jack Abramoff pleads guilty in federal court in Washington, D.C., to fraud, tax evasion and conspiracy as part of a plea deal that requires him to provide evidence about members of Congress.
- Jan. 4:** Abramoff pleads guilty in federal court in Miami to separate fraud and conspiracy charges involving mail and wire fraud.
- Jan. 5:** Abramoff launches the "Pleas Across America" tour, in which he will plead guilty in federal courts across the country to a variety of racketeering offenses, covering his old favorites as well as new and previously undisclosed charges. The tour will end in the Central District of California with a spectacular multi-count plea backed by a laser light show.
- Jan. 9:** Confirmation hearings begin in the Senate on the nomination of Judge Samuel A. Alito, Jr., to the United States Supreme Court.
- Jan. 10:** In Arizona, Judge Dennis Freeman upholds a citation for using a carpool lane without a passenger. The defendant had argued she was not alone at the time because she was pregnant. The judge notes that "passenger" generally means one who occupies a "separate and distinct . . . empty space in a vehicle."
- Jan. 17:** In a closely-watched case, the U.S. Supreme Court rules 6-3 in *Gonzales v. Oregon* that the state's "Death with Dignity Act" providing for physician-assisted suicide is consistent with federal law.
- Jan. 18:** In a more-closely-watched case, two people who put a severed finger in a bowl of Wendy's chili get ten years each for attempted extortion.
- Jan. 19:** The Justice Department releases a paper attempting to explain the legal rationale for the Terrorist Surveillance Program. Some seem to believe it may also result in some surveillance of non-terrorists.
- Jan. 23:** Police in Amsterdam capture "The Salamander Man," a thief named for his ingenious strategy of gaining entrance to homes by knocking on the front door and saying he would like to come in to "look for his lost salamander." About 60 victims fell prey to this scheme.
- Jan. 24:** A US federal judge issues a summary judgment against Christopher William Smith and awards AOL \$5.3 million in damages after Smith refused to participate in a lawsuit filed against him by AOL under the CAN-SPAM Act of 2003. Smith is accused of sending millions of spam e-mails to AOL customers.
- Jan. 26:** While attending the World Economic Summit in Switzerland, Senator John Kerry calls for the filibuster of the Alito nomination while windsurfing up a nearby ski slope, propelled solely by the breath that issues forth from him while speaking on the matter.
- Jan. 30:** The Senate votes for cloture by a 72-25 margin, ending the effort to filibuster the Alito nomination. Alito is confirmed the next day by a vote of 58-42—the closest margin in recent history.
- Feb. 1:** In his first day on the job, Justice Alito votes to maintain a stay of execution in a Missouri case. Justices Roberts, Scalia and Thomas scowl at Alito but look the other way when he glances over.
- Feb. 6:** Attorney General Gonzales testifies before the Senate Judiciary Committee about the Terrorist Surveillance Program. His testimony consists largely of making the sound "oooooooo" while an aide taps on his back so he will sound like a motorboat.

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<sup>1</sup> Kevin Underhill is an attorney at Shook, Hardy and Bacon L.L.P. in San Francisco. For the most part, the events listed in this document actually happened as described here and on the listed date. Some events have been created and/or enhanced for comedic effect. Mr. Underhill believes that most readers will be able to tell the difference, and accepts no responsibility for any reader's inherent inability or simple failure to do so.

(This disclaimer is one of the things that actually happened.)

- Feb. 21:** In *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, the Supreme Court holds that the government has not shown a compelling interest in prohibiting a certain *vegetal* that a religious sect has been using to generate a little *espirita beneficente*.
- Feb. 21:** Judge Leif Clark issues an "Order Denying Motion for Incomprehensibility." Ruling on a "Motion to Discharge Response to Plaintiff's Response to Defendant's Response Opposing Objection to Discharge," he states that "the court cannot determine the substance, if any, of the Defendant's legal argument . . . . The Defendant's motion is accordingly denied for being incomprehensible."
- Feb. 22:** The Al-Askari Mosque or "Golden Mosque" in Samarra, Iraq, one of the holiest religious sites in Shi'a Islam, is bombed. This leads to unpleasantness.
- Feb. 26:** A Scottish newspaper reports that President Bush seriously injured a policeman by crashing a mountain bike into him during the G8 summit in July 2005. The President allegedly lost control of his bike when he waved to the officers to thank them for coming. The paper speculates that details of the incident have been deliberately withheld to avoid embarrassing the president.
- Mar. 3:** Former Rep. Randy "Duke" Cunningham is sentenced to eight years and four months in federal prison for bribery and tax evasion.
- Mar. 3:** A poll finds that only 25% of Americans could name two or more of the freedoms protected by the First Amendment, while more than half could name two or more of the Simpson cartoon family. Twenty-two percent could name all five Simpsons. One out of every five Americans polled believed that the First Amendment protected the right to own a pet.
- Mar. 6:** In *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, the Supreme Court holds that the federal government may withhold funding from universities if they refuse to allow military recruiters access given to other potential employers.
- Mar. 9:** President Bush signs the USA PATRIOT Improvement and Reauthorization Act, a bill designed to improve and reauthorize the USA PATRIOT Act. Meanwhile, one of President Bush's top domestic advisers is arraigned on charges alleging that he swindled department stores out of \$5,000.
- Mar. 10:** Massachusetts Senate Bill 1384 is introduced. If passed, it would ban the carrying of machetes for any purpose other than cutting vegetation. The bill would also establish a presumption that the "carrying of a machete is not for the purposes of cutting vegetation."
- Mar. 12:** Senator Judd Gregg (R-NH) states, "It's hard to understand what a trillion [dollars] is. I don't know what it is." When he said this, he was chairman of the Senate Budget Committee.
- Mar. 16:** Curtis and Rhonda Gokey of Lodi, California, file claims against the city of Lodi for damage caused to their car when a city worker backed a dump truck into it. The city worker was Curtis Gokey. Rhonda Gokey's claim seeks a larger amount for the same damage. She explains the discrepancy by saying "I'm not as nice as my husband is." She proves that by also suing her husband.
- Mar. 17:** NBC News reports on tests run on airport security checkpoints by GAO investigators, in which they try to smuggle explosives and other bomb materials through checkpoints at 21 airports. They succeed 21 times. In response, a TSA spokesperson says that "[d]etecting explosive materials and IEDs at the checkpoint is TSA's top priority."
- Mar. 22:** In *Georgia v. Randolph*, the Supreme Court holds by a 5-3 vote in an opinion by Justice Souter that a co-resident in a home lawfully may refuse consent to a police search even if another resident consents. Chief Justice Roberts writes his first dissent.
- Mar. 26:** Justice Antonin Scalia reportedly makes an "obscene gesture" at a reporter after being asked about impartiality in matters of church and state as Scalia is leaving church. Scalia later writes the paper to explain that the gesture, which involved "the extended fingers of one hand moving slowly back and forth under the raised chin," is not obscene but rather is a Sicilian gesture meaning "Count me out."
- Mar. 30:** Julia Bish is charged with bigamy for marrying a man in Las Vegas though she was already married to a man in her home state of Pennsylvania. In a debate with an Emory University law professor on CNN, Bish's attorney argues that Pennsylvania cannot prosecute his client for bigamy because "What happens in Vegas, stays in Vegas."

- Mar. 31:** Tony Rudy, former deputy chief of staff to Rep. Tom DeLay, joins the Pleas Across America tour and agrees to cooperate with investigators. Rudy's guilty plea also implicates "Representatives #1 and #2." Representatives #3 through #435 have a party to which DeLay is not invited.
- Mar. 31:** In Florida, Arthur Vanmoor sues six of his former customers for allegedly breaking the law by paying to have sex with women who worked for Vanmoor's "escort service" and who unbeknownst to him were engaging in prostitution. His case is not helped by the fact that an investigation finds that Vanmoor used the alias "Big Pimpin' Pappy."
- Apr. 3:** Rep. DeLay announces his resignation from Congress, saying he is stepping down so that the coming election will be about the issues instead of him.
- Apr. 12:** High-school student Ghyslain Raza settles his emotional-distress lawsuit just days before trial. Raza had become known as the "Star Wars Kid" after a video he made of himself using a golf-ball retriever as a "lightsaber" was found by other students and posted on the Internet. Hundreds of video clips were adapted from the original and posted by others.
- Apr. 18:** Reports surface that Kimberly Williamson Butler, a candidate for mayor of New Orleans, has used an image on her website that allegedly shows the candidate in the French Quarter of her beloved city, but in fact is a photo of the "New Orleans Square" section of Disneyland that has been digitally altered.
- Apr. 26:** A jury in California, awards a woman \$500,000 for her claims that she was forced to quit her job after being spanked as part of a "team-building exercise." Underperforming sales teams were allegedly spanked, hit with pies, and forced to wear diapers. The company's lawyers say that this was done "in fun to build camaraderie."
- Apr. 28:** In *Yoneda v. Tom*, a court rules that a golfer cannot recover for being hit in the eye with a golf ball. The court says golfers assume the risk of injury because it is "common knowledge" that golf balls do not always go where intended. It also says the result is good policy because golf involves "exercise" and "the smell of the pines and eucalyptus renews the spirit and refreshes the body."
- May 1:** Justice Alito writes his first opinion, a unanimous opinion in *Holmes v. South Carolina*.
- May 18:** The Wisconsin Supreme Court rules that police did not violate the Fourth Amendment when they forced a suspect to take a laxative in order to recover swallowed evidence. The court of appeals had ruled the "search" could not be conducted without a warrant.
- May 20:** Federal agents search the office of Rep. William J. Jefferson (D-LA), who is the subject of a federal bribery investigation. Rep. Jefferson files a motion for return of the seized property, alleging violation of the Fourth Amendment and the Speech or Debate Clause.
- May 25:** A federal jury in Texas convicts former Enron Chairman Kenneth Lay and former CEO Jeffrey Skilling of conspiracy and fraud.
- June 5:** Kenneth Lay dies of coronary heart disease, thus winning his appeal automatically. In a risky strategic decision, Jeffrey Skilling announces that he will remain alive.
- June 6:** Judge Greg Presnell (M.D. Fla.) orders counsel for the parties in *Avista Mgt. v. Wausau Underwriters* to resolve a stubborn discovery dispute by meeting at a neutral site to engage in a match of "rock, paper, scissors." The dispute is resolved prior to the match.
- June 22:** Against the wishes of the White House, the New York Times reports that since late 2001, the government has been subpoenaing international banking records in order to track terrorist finances.
- June 23:** Somewhere in Afghanistan, Osama bin Laden leaps up out of his armchair, spilling his latte and throwing his morning copy of the New York Times to the ground, shouting to his aides that their international banking records are in jeopardy.
- June 28:** In *League of United Latin American Citizens v. Perry*, a Texas redistricting case, the Supreme Court holds that only one of the challenged voting districts violated the Voting Rights Act. The Court notes that from the air, the shape of the district bears a remarkable likeness to the face of Tom DeLay.
- June 29:** The Supreme Court holds in *Hamdan v. Rumsfeld* that President Bush cannot establish military commissions without the approval of Congress, and that Article 3 of the Geneva Conventions applies.

- July 3:** The Ninth Circuit rejects Ron Tutor's civil-rights claim against the city of Hailey, Idaho, ruling that Tutor has no constitutional right to land his personal Boeing 737 at the city's small airport, which is close to Tutor's vacation home. Tutor had claimed violations of his rights to equal protection, due process, the Commerce Clause and his constitutional right to travel.
- July 10:** Federal District Judge Thomas F. Hogan in Washington, D.C., denies Rep. Jefferson's motion, holding that the search of his office was constitutional and that the government demonstrated a compelling need to conduct it. Jefferson appeals.
- July 10:** Virginia Gov. Timothy Kaine officially pardons Grace Sherwood, "Virginia's only person convicted as a witch tried by water." Sherwood, known as the "Witch of Pungo," was dropped into the Lynnhaven River on July 10, 1706. She was convicted of not drowning and was jailed for eight years. "With 300 years of hindsight," said Governor Kaine, "we all certainly can agree that trial by water is an injustice."
- Aug. 4:** Judge Pendleton Gaines grants a plaintiff's "Motion to Compel Acceptance of Lunch Invitation." The parties are directed to pay the bill on a pro rata basis, and to tip not less than 20 percent.
- Aug. 15:** A New Jersey court rules in *Mathews v. University Loft Co.* that a bunk-bed manufacturer has no duty to warn the user of a bunk bed that rolling off the top bunk while sleeping may cause injury. The decision is partly based on the fact that the requested warning would have been ineffective since plaintiff could not have read it while sleeping.
- Aug. 17:** Michigan federal judge Anna Diggs Taylor finds the Terrorist Surveillance Program unconstitutional and enjoins it. The Sixth Circuit stays the injunction pending appeal.
- Sept. 6:** President Bush acknowledges the existence of a covert CIA program to detain and interrogate leaders of al Qaeda. He calls on Congress to authorize the creation of military commissions.
- Sept. 17:** Arkansas attorney John Wesley Hall files a motion to continue a trial date set for November 8, 2006, on the grounds that deer season begins on November 11 and so a large percentage of potential jurors are unlikely to show up. The motion is later granted.
- Sept. 29:** Rep. Mark Foley (R-FL) resigns from Congress after questions are raised about e-mails he sent to a 16-year-old former page. The e-mails disturb many because of their lack of proper capitalization, punctuation, and sentence structure. Aides initially state there is nothing wrong with the emails, but are forced to withdraw that claim after the extent of Foley's degraded syntax becomes clear.
- Oct. 17:** A Texas federal judge vacates Kenneth Lay's criminal conviction on the grounds that Lay is dead. Six days later, Jeffrey Skilling's decision to stay alive backfires when he is sentenced to 24 years in prison.
- Oct. 26:** President Bush signs the Secure Fence Act of 2006, authorizing construction of a 700-mile fence on the border with Mexico. All illegal immigration halts immediately.
- Oct. 31:** Drivers in South Portland, Maine, report spotting Osama bin Laden along an interstate highway, waving a gun at traffic. Police arrest Thomas Connolly, a local attorney who says the bin Laden costume and fake gun were part of a tax protest.
- Nov. 5:** In Iraq, Saddam Hussein is convicted and sentenced to death. He later calls on "all Iraqis, Arabs and Kurds to forgive, reconcile and shake hands." They don't.
- Nov. 7:** Election 2006. Democrats gain control of Congress. Also, "Andy Griffith" loses his bid for sheriff of Grant County, Wisconsin, despite having changed his name from "William Fenrick" in order to increase name recognition. Fenrick/Griffith is later sued by the real Andy Griffith, formerly the star of "The Andy Griffith Show," in which he played a fictional sheriff named "Andy Taylor."
- Nov. 8:** President Bush accepts the resignation of Defense Secretary Donald Rumsfeld and nominates former Director of Central Intelligence Robert Gates to succeed him. The Iraq insurgency halts immediately.
- Nov. 11:** A commission in Powys County, Wales, tells Black Mountain Smokery that it must change the labeling for its "Welsh Dragon Sausage," pointing out that the sausage is not made from real dragon.
- Nov. 15:** Reports state that O.J. Simpson has written a book called "If I Did It, Here's How It Happened," which Simpson says is a hypothetical description of how he would have killed his wife and Ron Goldman if he had been the one who killed them, which, as the book's title makes clear, he was not.

- Nov. 23:** Seven plaintiffs sue the city of Minneapolis, claiming they were arrested without cause during a “zombie dance party” in July 2005. Police say the plaintiffs’ “ghoulish” makeup and zombie behavior was “suspicious and disturbing,” and that authorities were already on high alert due to a bulletin about a rash of clown-perpetrated robberies in other states.
- Nov. 28:** The California Court of Appeal rules that a San Diego man, Darren Lloyd Bean, has the right to legally change his name to “Darren QX Bean!” complete with exclamation point. The court notes that the right to change one’s name is very broad. Bean! later tells reporters that the “QX” is pronounced “Lloyd.”
- Dec. 5:** Kevin Pugh of Cedar Bluff, Miss., pleads guilty to disturbing the peace by throwing a pig over the counter at a Holiday Inn Express. Police said Pugh was not drunk and did not have a grievance with the hotel. Pugh had previously pleaded innocent to throwing a possum at a Hardee’s restaurant.
- Dec. 6:** A judge in Boulder, Colorado, rules that playing “Hacky Sack” is not “juggling” for purposes of a city ordinance that specifically allows juggling without a permit. He fines the offender \$40.
- Dec. 21:** The Law and Justice Party, Poland’s majority party, introduces a bill that would make Jesus Christ the honorary King of Poland. Jesus’ candidacy is also supported by the League of Polish Families and the opposition Peasants Party. It is opposed by the Roman Catholic Church.