

JULY/AUGUST 2025

INDIANA STATE BAR ASSOCIATION

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THE RULE OF LAW STARTS WITH US: A SPECIAL ISSUE ON THE LEGAL PROFESSION'S ROLE IN CIVIC EDUCATION AND BUILDING PUBLIC TRUST

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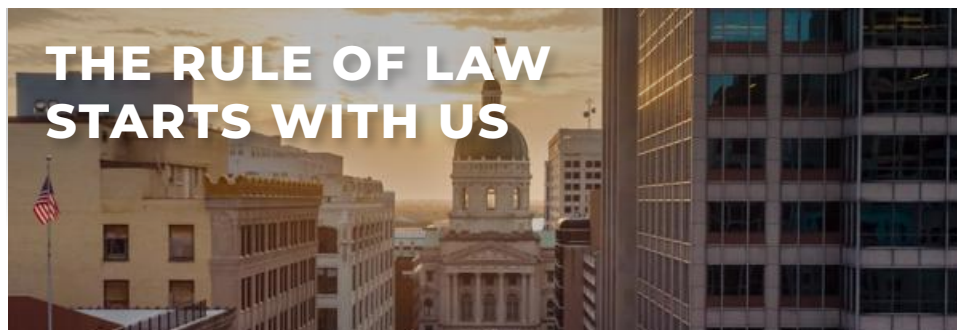
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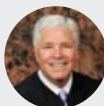
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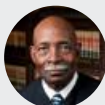
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President's Perspective

THE RULE OF LAW: OUR ENDURING FOUNDATION

By Michael Jasaitis

PRESIDENT'S PERSPECTIVE

On my desk, I have a small but meaningful reminder of why we do what we do. It is a challenge coin given to me by former Supreme Court Justice David, bearing just these simple yet powerful words: “The Rule of Law—Always.” This touchstone serves as a constant reminder that our profession carries a responsibility far greater than any individual case, client, or career milestone.

On May 1, Law Day 2025, I had the profound honor of speaking on behalf of our association at a historic gathering on the plaza of the Birch Bayh Federal Building and U.S. Courthouse in Indianapolis. Surrounded by colleagues from across Indiana’s legal community, including the Indianapolis Bar Association, the Indiana Supreme Court, the Indiana Bar Foundation, the Asian Pacific American Bar Association of Indiana, the Defense Trial Counsel of Indiana, the Indiana Trial Lawyers Association, and many others, we came together not as political partisans or competing interests, but as guardians of something precious and fragile: the rule of law.

The rule of law is not merely an academic concept confined to law school classrooms or judicial opinions. It is the invisible architecture that makes civilized society possible. When a parent challenges an unfair policy related to a family member, when a business owner seeks to enforce a contract, and when a citizen questions government action, they are exercising rights that exist

only because we have agreed, as a society, to be governed by law rather than by the arbitrary will of those in power.

This principle, that no person stands above the law and that laws apply equally to all, represents one of humanity’s greatest achievements. It took centuries to establish but can be eroded in far less time. As President Eisenhower observed during the first Law Day in 1958: “The clearest way to show what the rule of law means to us in everyday life is to be reminded of what happens when there is no rule of law.” Having witnessed the horrors of World War II, Eisenhower understood that when legal systems collapse, human dignity inevitably follows.

The strength of the rule of law lies not in its association with any particular political philosophy, but in its transcendence of partisan divisions. Presidents from both

parties have recognized this fundamental truth. Ronald Reagan spoke of how “true peace rests on the pillars of individual freedom, human rights, national self-determination, and respect for the rule of law.” John F. Kennedy reminded us that while “certain other countries may respect the rule of force, we respect the rule of law.”

These were not and shouldn’t be partisan talking points, but rather they were statements of core American values. The rule of law does not favor conservative or liberal outcomes; it favors fair processes, consistent application, and equal treatment under law. It protects





"The rule of law is not merely an academic concept confined to law school classrooms or judicial opinions. It is the invisible architecture that makes civilized society possible."

the rights of all citizens regardless of their political beliefs, economic status, or social position.

At our Law Day celebration, we participated in a reaffirmation of our attorney oath administered by the Honorable Sarah Evans Barker of the U.S. District Court, Southern District of Indiana. This was not mere ceremony. It was a reminder that our oath represents the foundation of our professional identity. When we swore to support the Constitution, to maintain respect for courts and judicial officers, and to never mislead through artifice or false statement, we accepted obligations that extend far beyond our individual practices.

They require us to defend judicial independence even when we disagree with particular decisions. They demand that we tirelessly represent our clients while maintaining the integrity of legal processes. They call us to ensure that all people have access to justice, not just those who can afford it. And they require us to educate others about why these principles matter.

As legal professionals, we serve as both beneficiaries and guardians of the rule of law. We benefit from a system that provides predictable procedures, enforceable contracts, and protection from arbitrary government action. In return, we bear the responsibility of

maintaining public confidence in that system through our conduct, our advocacy, and our commitment to justice.

Today's challenges to the rule of law come from multiple directions. Some question the legitimacy of judicial decisions when they disagree with outcomes. Others suggest that legal technicalities should yield to desired results. Still others propose that the urgency of particular causes justifies bypassing established procedures. And we have seen this on all sides of the aisle.

One of our greatest responsibilities is education. Too many citizens lack basic understanding of

constitutional principles, judicial independence, and the role of legal procedures in protecting rights. When people do not understand why certain processes exist, they become susceptible to arguments that these processes are unnecessary obstacles rather than essential protections.

Defending the rule of law demands active engagement. It also means modeling respectful discourse in our professional interactions. When we attack opponents personally rather than addressing their arguments, when we question the motives of judges rather than the reasoning in their decisions, and when we suggest that procedural protections are mere technicalities, we undermine the very system we have sworn to uphold.

Our association's commitment to these principles is not situational or politically convenient. It is foundational. We stand for the rule of law not because it always produces outcomes we prefer, but because it provides the only reliable means of resolving disputes peacefully and protecting individual rights in a diverse democracy.

The rule of law survived the Civil War, two World Wars, the Great Depression, and countless other challenges because Americans understood that abandoning it would cost more than preserving it ever could.

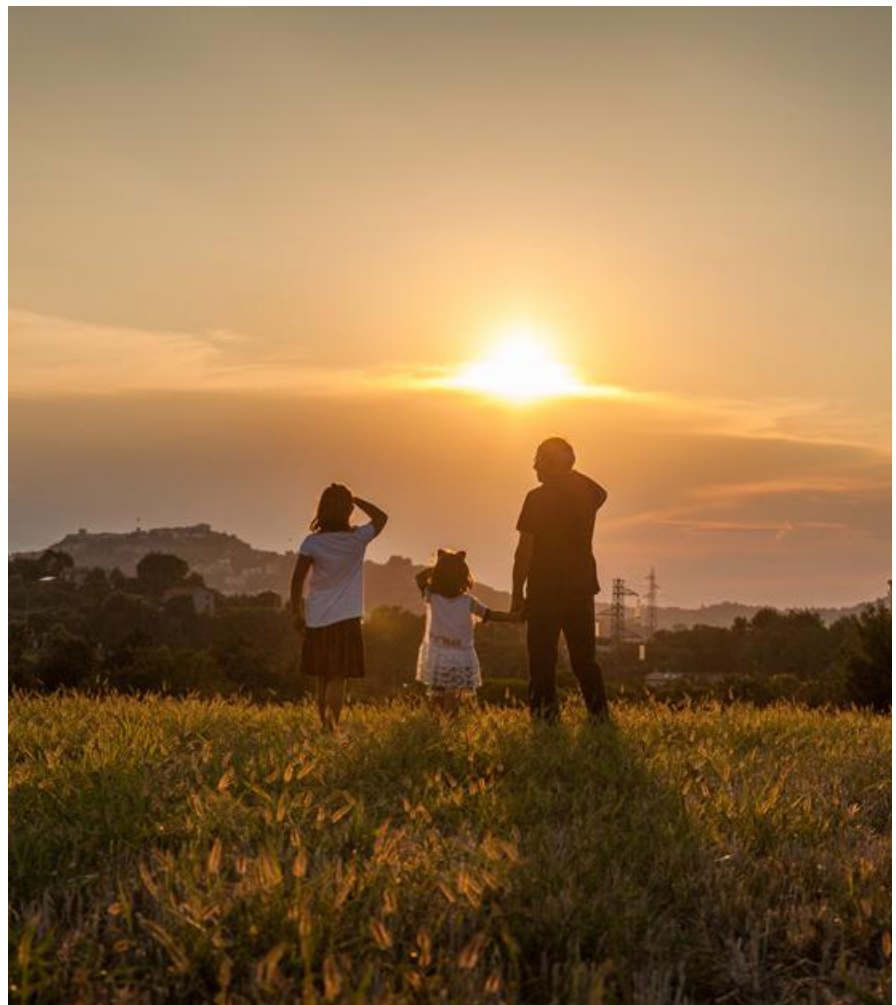
As we encounter political polarization, technological disruption, or global instability, it is tempting to sacrifice procedural protections for expedient solutions. Our response must be constant: remain steadfast to the principles that have served us well for more than two centuries.

"Let us ensure that future generations inherit a legal system as strong as the one we inherited—one where the rule of law remains not just an aspiration, but a daily reality."

Justice David's challenge coin reminds us that this commitment is not optional for members of our profession. We did not choose to become lawyers merely to practice a trade. We chose to join a profession dedicated to justice under the law. That choice carries obligations that extend beyond individual success to collective responsibility

for maintaining the legal system's integrity.

Let us ensure that future generations inherit a legal system as strong as the one we inherited—one where the rule of law remains not just an aspiration, but a daily reality. This is our calling, our obligation, and our greatest service. 



THE IMPORTANCE OF THE RULE OF LAW

By Hon. Christopher M. Goff



This is an edited transcript from Justice Goff's speech at the Inaugural Law Day Rally on May 1, 2025, provided by the Indiana Supreme Court.

In 1858, Abraham Lincoln ran an unsuccessful campaign for the United States Senate. During that campaign, he gave a speech entitled, "A house divided against itself cannot stand." Lincoln's speech was delivered during a period of intense national strife, as the country was deeply divided over the issue of slavery. And his words resonated with a growing sense of urgency in the North. The "house divided" speech became a rallying cry for those opposed to slavery and paved the way for Lincoln's eventual election to the presidency in 1860.

The concept of division and its potential impact on our nation remains relevant today. The phrase, a house divided, serves as a reminder of the importance of unity and compromise in navigating complex social and political issues. We are multi-racial and multi-cultural, we express our love for our spouses and partners in different ways, we worship in different ways or not at all, and we hold many different opinions on important (and even not so important) subjects.

But despite these differences, we have endured and even thrived as a nation due largely to our commitment to the rule of law. The rule of law is a cornerstone of a just and prosperous society, ensuring that power is constrained by law and that everyone is accountable for their actions. It ensures that everyone is treated equally and fairly under the law. It provides a predictable framework for society, allowing people to live and work free from unjust

"But despite these differences, we have endured and even thrived as a nation due largely to our commitment to the rule of law."

oppression. It protects individual rights and freedoms, preventing abuse of power by those in authority. It provides a stable and predictable legal environment—essential for attracting investment and promoting economic growth.

And, relevant to our gathering today, the rule of law requires a system of courts that are free from undue influence and that can fairly and impartially interpret and apply the law. For nearly 250 years, our nation has had such a system. Although admittedly imperfect, the American legal system has been viewed as a trusted and stabilizing institution, capable of advancing our commitment to the rule of law, and worthy of public trust.

But that view has become less prevalent in our divided country today. Faith in the fairness and

impartiality of our legal system, like faith in our other institutions, has diminished. Some no longer accept that judges are impartial umpires or that lawyers are out for anything other than a fee. I believe such views present a grave threat to the rule of law and I believe them to be unfounded. I also believe that Lincoln's house divided speech shows us the way forward as lawyers and judges.

I believe that our collective commitment to the rule of law has bound us as a people. But our house again stands sharply divided in many ways that may seem insurmountable. Those of us fortunate enough to serve in the justice system know that we are in the business of resolving human conflict peacefully. We must embrace that. We must hold each other up. We must help our

neighbors understand why that is important. Because the alternative—the rule of power and mob violence—is unthinkable.

And if we are to make others understand this, we must dedicate ourselves to the rule of law. We must strive to embody the oaths we are about to renew. We must acknowledge those times we have fallen short of the aspirations embodied in the concept of the rule of law. And we must renew our commitment to the concept.

As a young lawyer, I thought the biggest fights to be had in the courtroom had already happened. I never dreamed that so many divisive issues, although seemingly settled, would be once again up for debate. And so, if you aspire to fight the good fight, you've picked a good time to be a lawyer. And even if you



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"For nearly two and a half centuries, our profession has been entrusted with the awesome responsibility of securing and safeguarding the rule of law. It has now fallen to us to restore a measure of that trust that has been lost."

prefer to have a reasoned discussion about the legal system, the structure of government, or the importance of respecting individual liberty, we need you just as badly.

We live in a divided time. We live in a time that can be dark and cruel. But we have an alternative to offer to our friends and neighbors. We offer a way of resolving conflict peacefully. We offer a way of living together and mutually benefiting each other—and of benefitting our communities. We offer the rule of law.

Friends, let us not be a house divided. For nearly two and a half centuries, our profession has been entrusted with the awesome responsibility of securing and safeguarding the rule of law. It has now fallen to us to restore a measure of that trust that has been lost. We each took an oath to support the Constitution and to uphold its ideals, striving for a "more perfect union" for "we the people." Remember the attorney's oath. Embody it. Don't be afraid to do your job. Hold each other up and, in everything you do, foster confidence in our profession. ☯



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WISDOM FROM THE BENCH: THOUGHTS ON FACING INJUSTICE, REMAINING MOTIVATED, AND LOVING THE RULE OF LAW

**By Hon. Steven David, Angka Hinshaw, Hon. John Baker,
Hon. Carr Darden, and Hon. Robert Rucker**



On June 20, retired Judge John Baker, Judge Carr Darden, and Justice Robert Rucker sat down with Justice (Ret.) Steven David and Angka Hinshaw for the ISBA's *Open Conversations* program. They discussed the challenges they faced in their legal careers, the importance of public service, and the legal profession's ongoing responsibility to defend the rule of law.

Through personal stories and advice, they offered a reminder of the responsibility lawyers carry, especially in times of uncertainty and injustice. Below is an edited transcript of some of their comments.

You can watch the full recording of this CLE on ISBA's on-demand CLE library at www.inbar.org/on-demandCLE.

ON FACING INJUSTICE

HON. CARR DARDEN: You know, racism is something that we have to be constantly on guard against. All of my life I fought against it. From the time I was a young child, I used to ask my mother, "Why is it that my brothers, who fought in World War II, have to sit in the back of the bus, or can't get good jobs?" And she always said, "Study hard. Work hard. One day you'll understand."

I didn't quite understand at that time, because I was just a young person, but I accepted her



**"Don't ever take anything for granted.
You see an injustice, you face it.
You don't back away from it."**

challenge. Work hard and be fair. Be open. Persuade people that there's a better way. It has helped me to look at things differently. I can't change history. I can't change the atmosphere that I was born into. But I can certainly try to make a change going forward, to make sure that the younger generation coming along doesn't have to suffer the things that I experienced.

I want to pass that on, especially to the younger lawyers. Don't ever take anything for granted. You see an injustice, you face it. You don't back away from it. It's a challenge. I don't know whether we can win it, but we certainly can smooth out the rough edges and make it better for the next generation that follows us.

I think the thing that separates this country from other countries

in particular, is the fact that we're a democratic society. But, more importantly, we are a benevolent society. And I think that once we lose that we're in deep trouble.

I gave a speech at the Indianapolis Bar Association about three years ago, and I still believe what I said today. I'm a little bit concerned when I hear people say, "Make America great again." "Again." To me, it's past tense. America has *always* been great. My motto would be, "Make America greater." Not "again." What period of time were we talking about, "again"? You talking about beginning of the century, 1900? Are you talking about 1920, when women couldn't vote? Are you talking about the 1940s, 50s, and 60s, when Afro-Americans couldn't vote, or when we were involved in a great civil rights movement? No, I think that we need to address those issues now. We cannot concentrate on "making America great again." Make America greater going forward.

ADVICE ON STAYING MOTIVATED, BEING AN ADVOCATE, AND MOVING FORWARD

HON. CARR DARDEN: There's an old motto out there that goes something like, "Find a job that you love, and you never work a day in your life." If you love the practice of law, you'll never work a day in your life. I would encourage you to stay strong in the field that you're working in. Study hard, keep updated. Have compassion for your client. Build a reputation of honesty and hard work with the court and with your opponent. In the long run, it'll pay off. I guarantee it will.

HON. JOHN BAKER: Several years ago, I was asked to make the comments at the swearing-in ceremony for new lawyers. I shared with the

"And then there's love. I believe that comes when you try to engage yourself with the community, the state, your nation, and the world, when you come to love and respect and honor the rule of law."

new admittees what my father used to sign in his letters: "Work hard. Have fun. Love, dad." Several years later I came to realize at his passing that this was his mantra, his motto. I came to understand, as Carr has already suggested, that as a young lawyer it's imperative that you work hard. You might not be as smart as your opponent, but I suspect more often than not you can outwork them.

I'd also suggest to those young people that they have fun, that they learn how to help people solve problems, but to do so with an *esprit* with them—so that they can enjoy not only their clients but the coworkers and the judges and lawyers with whom they practice.

And then there's love. I believe that comes when you try to engage yourself with the community, the state, your nation, and the world, when you come to love and respect and honor the rule of law. I would encourage these young people to volunteer not only their legal services, but to get involved in the community. I think at the end of their career, they will, as Carr has already suggested, appreciate that they made the right choice in becoming a lawyer.

HON. ROBERT RUCKER: The only wisdom that I have is the wisdom that Justice David shares. Work hard. Do good. Be proud. Have fun. Remember the rule of law always. Embrace the practice of law and advocate for the profession.

FINAL THOUGHTS

HON. JOHN BAKER: Lawyers are problem solvers. It has been my experience that as problem solvers, they are making our country and society a better place. It's a heavy burden to continue to maintain the rule of law, but it's a vocation that becomes a calling. I encourage you to always think of that higher calling—of maintaining the rule of law and striving for a society where every person feels included,

is housed, has medical care, and has the opportunity to have meaningful employment. And I think that if we work hard, have fun, and show love, we can get there.

HON. STEVEN DAVID: If you ever need a reboot or recognition that what you are doing is worthwhile—even though at the moment it doesn't seem that way—we can't think of three better human beings to remind you of how important the work is. 🙏



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WHAT IS A "JAG" AND WHY SHOULD WE CARE?

By J Thomas Parker



Most of us heard that the Chairman of the Joint Chiefs of Staff, General Charles Q. Brown, and the Navy Chief of Staff, Admiral Lisa Franchetti, were fired about a month after the current administration came into office.¹ There was a bit less press coverage, but the Commandant of the Coast Guard, Admiral Linda Fagan, was also relieved the day after President Trump was sworn into office.² These three individuals were, at the time of their dismissals, the senior commissioned officers serving in their respective military services. General Brown was also the senior ranking member of all the services.

What we, even as lawyers, might not have caught onto is that the Judge Advocates General of the Army and Air Force were also dismissed along with Brown and Franchetti.³ Their dismissals were a bit under the radar given the terminations of the more senior officials, but they were the senior uniformed legal advisors to the Army and the Air Force.

This article explains who these senior uniformed lawyers are and answers why the rest of the profession should take note of this extraordinary turn of events.

WHO AND WHAT ARE THE JUDGE ADVOCATES GENERAL?

The Judge Advocates General (TJAGs) are the highest ranking uniformed legal advisors to the Army, Navy, and Air Force

"Lawyers are not—and have not been—among the most trusted professionals, but the elevation of the offices showed that the services valued the role that judge advocates play."

secretaries with the Air Force TJAG being "dual-hatted" as TJAG for the Space Force.⁴ There is also a TJAG for the Coast Guard⁵ and the senior uniformed legal advisor for the Marine Corps is the Staff Judge Advocate (SJA) to Commandant.⁶ All of these officers, except for the SJA to the Commandant, are three-star lieutenant generals and vice admirals. These ranks are the second highest currently authorized. The math is difficult,⁷ but there are only about 121 "three stars" on active duty. To put that into perspective, there are roughly two million people serving in the armed services in the active and reserve components. In addition to advising the service secretaries, TJAGs and the SJA to the Commandant "direct the members of the Judge Advocate General's Corps in the performance of their duties"⁸ which is to provide legal advice to commanders and servicemembers at all levels. TJAGs also have numerous responsibilities regarding the administration of military justice under the Uniform Code of Military Justice.⁹

The three-star rank was first authorized in 2008,¹⁰ and it is something that the entire profession should have celebrated. Lawyers are not—and have not been—among the most trusted professionals,¹¹ but the elevation of the offices showed that the services valued the role that judge advocates play. More telling still is the fact that Congress took this authorization away in 2016 when it reduced the

number of authorized three- and four-star billets,¹² but the Army, the Air Force, the Navy, and the Coast Guard continued to use one of their three-star allocations on their TJAGs. By doing so they showed their continued esteem for the office and their continued recognition for its place within the departments.¹³

Those who are chosen to serve as a judge advocate general have served careers as judge advocates.¹⁴ As an aside, before being selected to serve

as TJAGs, these individuals did not serve as "JAG's." "JAG" is often used as shorthand for judge advocates, but it literally stands for "Judge Advocate General." Judge advocates are members of the Judge Advocate General's Corps (JAGC), but to refer to a judge advocate who is a captain (or even a brigadier general) as "a JAG" is technically incorrect. To say, "I am/was a JAG," is most likely incorrect as well, unless the speaker is or was one of the services' TJAGs.¹⁵

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"Attorneys adhere to professional standards and, regardless of their roles, they hew to the rule of law. To suggest they do otherwise is worse than a lawyer joke and as disturbing as the opinion that lawyers are among the least trustworthy professionals."

The point to be made, however, is that an officer selected for assignment as a judge advocate general has vast experience as an attorney and advisor to commanders and their staffs. The two officers who were relieved fit this mold. According to his official biography,¹⁶ the Army TJAG, Lieutenant General Joseph Berger, served in Iraq, Afghanistan, Somalia, and Kosovo.

He was the staff judge advocate (principal legal advisor) for the Joint Special Operations Command in one of his last assignments before being selected to serve as TJAG. He is a paratrooper and has been awarded the combat action badge which is given to soldiers who were at some point "personally present and actively engaging or being engaged by the enemy."¹⁷ Lieutenant General

Charles Plummer, the former Air Force TJAG, had a similar career.¹⁸ He was awarded the Distinguished Service Medal on two occasions. He served as a legal advisor to the Joint Chiefs of Staff and as the SJA for a task force deployed to Jordan. Before becoming TJAG he was the Air Force's Deputy Judge Advocate General.

WHY SHOULD WE CARE?

Little was said when these career officers were fired. Historically, relieving a senior officer would be explained or otherwise clear.¹⁹ As to the two TJAGs, Secretary of Defense Peter Hegseth said he felt the officers might stand as “roadblocks to orders that are given by a commander in chief.”²⁰ He did not elaborate and gave no reasons for that conclusion.²¹

So, what are we to make out of all of this and why should we care? There are many reasons, but first and foremost, there should be concern about what Secretary Hegseth said and did not say. Whatever his experiences, his conclusions are counterintuitive. TJAGs and other judge advocates do not reach their positions without being in tough assignments and they do not get there by being roadblocks. More importantly, they would not be there if they had been too restrictive or too lax with their interpretations of the laws of armed conflict and the rules of engagement,²² or either too lenient or too harsh with their recommendations made pursuant to the Uniform Code of Military Justice. Getting servicemembers killed because of bad legal advice or hindering even peacetime missions will not win any judge advocate medals and promotions. On the flip side, giving advice that is only meant to please will be seen through and dismissed.²³

Second, when the TJAGs were made lieutenant generals and vice admirals we should have celebrated. This was a good news story for the legal profession. The summary dismissal of two TJAGs in the face of little explanation should likewise be something for the entire profession to be aware of albeit this time with a reaction of utmost

concern. The summary dismissals serve as an affront to the profession and the rule of law. Attorneys adhere to professional standards and, regardless of their roles, they hew to the rule of law. To suggest they do otherwise is worse than a lawyer joke and as disturbing as the opinion that lawyers are among the least trustworthy professionals.

A third reason is that those who might consider a career as a judge advocate might now consider doing something else, resulting in a loss of competency and dedication in the Judge Advocate General's Corps.²⁴ Frankly speaking, that concern will become reality, but only if others in the officer corps become less competent and forget “[t]he idea that war is a rule-governed activity deeply embedded in the American psyche and in the DNA

of American practitioners of the profession of arms.”²⁵

CONCLUSION

There is hope, however, that none of those things will happen. With the exception of the Coast Guard, Congress has established that “[n]o officer or employee of the Department of Defense may interfere with (1) the ability of the Judge Advocate General to give independent legal advice...or (2) the ability of judge advocates...assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.”²⁶ Next, a short book, *The Armed Forces Officer*, has been “standard issue” since 1950 and has been widely read by officers from all services.²⁷ The current version of this government publication

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tells officers that “the Just War tradition[s]...underlying principles have been enshrined in the Law of Armed Conflict (LOAC) and International Humanitarian Law (IHL)” and that these “principles provide a common ground for distinguishing warriors from barbarians, and honorable soldiers from war criminals.”²⁸

Secretary Hegseth and the current administration have certainly not called for barbarism and there is no evidence that commanders and other officers are seeking to skirt the laws of armed conflict or the rules of engagement or to coddle criminals any more than their judge advocates and the judge advocates general. Instead, commanders and their judge advocates will continue to show “the courage to speak truth to authority[] and the courage to act and then be accountable.”²⁹ Subordinates will continue to stand-up for what they see as right because that is a fundamental ideal that those serving in the United States Armed Forces value. With that in mind, a drain on competency and dedication throughout the military is doubtful, but summary dismissals of talented legal advisors and like developments are things that our entire profession must remain cognizant. ☞

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3. Thomas Novelty and Konstantin Toropin, *People Are Very Scared: Trump Administration Purge of JAG Officers*

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4. See 10 U.S.C. §§ 7037 (Army), 8088 (Navy), and 9037 (Air and Space Forces). Civilian general counsel are the senior legal advisors to the secretaries. See *id.* at §§ 7019 (Army), 8019 (Navy), and 9019 (Air and Space Forces). There is no similar statutory provision for the Coast Guard TJAG.
5. *Id.* § 801(1).
6. *Id.* § 8046.
7. *Id.* § 525.
8. *Id.* § 7037(c)(2) (Army). With the exception of the Coast Guard, the statutory provisions for the Navy, Air Force, and Marine Corps are virtually the same.
9. See generally *id.* §§ 801-950.
10. See National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 102-408, 122 Stat. 114. See also Senate Armed Service Comm, FY 17 NDAA Bill Summary 3 (2016), <https://www.armed-services.senate.gov/imo/media/doc/FY17%20NDAA%20Bill%20Summary.pdf>. The reduction was deemed necessary “because the size of the general and flag officer corps has become increasingly out of balance with the size of the force it leads.” *Id.*
11. See, e.g., Megan Brennan and Jeffrey M. Jones, *Ethics Ratings of Nearly All Professions Down in U.S.*, Gallup (Jan. 24, 2024), <https://news.gallup.com/poll/608903/ethics-ratings-nearly-professions-down.aspx>.
12. See National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 502.
13. No reliable and complete list of the services’ judge advocates general could be found. However, annual reports to Congress signed by the judge advocates general for the time period from 2016 to 2024 are maintained on the United States Court of Appeals for the Armed Forces’ website, https://www.armfor.uscourts.gov/ann_reports.htm.
14. The statutes on point require that a judge advocate general “have . . . at least eight years of experience in legal duties as commissioned officers.” 10 U.S.C. § 7037(a) (emphasis added). As a practical matter, the only place a commissioned officer would perform legal duties is in their service’s Judge Advocate General’s Corps.
15. As a noun, the word “jag” is synonymous with “spree,” but it can also mean “a state or feeling of exhilaration or intoxication usually induced by liquor.” “Jag,” Merriam-Webster.Com Dictionary, <https://www.merriam-webster.com/dictionary/jag>. Accessed 13 Apr. 2025.
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23. Major General George G. Kundahl, *What a Commander Looks for in a Staff Judge Advocate*, 152 Mil. L. Rev. 189 (1994).
24. See, e.g., Thomas Novelty and Konstantin Toropin, *supra* note 3.
25. Richard M. Swain and Albert C. Pierce, *The Armed Forces Officer* 49 (2017). As a government publication there have been several iterations of this work, but they have not been published as separate editions.
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HAVING A POLITE CONVERSATION ABOUT THE RULE OF LAW

By Kevin McGoff



“He who saves his country does not violate any law.”

“I don’t care what the judges think. I don’t care.”

Public officials recently made these comments. It is a tiny sample of rhetoric, commentary, and opinions that question the authority of the judiciary to conduct its constitutional function that has crept into the daily news.

Is this the norm? Is our country experiencing a frontal assault on the rule of law? Are these offhand comments not to be taken seriously and meant only to appeal to one group and rile up others?

More frequently, I am being asked for my views on the rule of law. I will bet you have as well. “Can courts enforce their rulings?” “Is the rule of law no longer prevailing?” “What is the rule of law anyway?” Informed and invested citizens not trained in law are asking these questions. We lawyers need to be prepared with good answers.

POLITE CONVERSATION IS POSSIBLE

There are many adjectives to describe the current state of public discourse; today I’ll settle on “distressing.” Talking about many relevant topics of the day risks a heated discussion. The rule of law, however, should not be a partisan topic.

The notion that the United States is governed by a set of rules intended to apply equally to everyone is pretty basic. It’s not a Red, Blue, Whig, or Libertarian party issue. No need to get excited while chatting about the rule of law. It ought not to be a controversial subject. Tone, of course, is important. It pays to be respectful

"The notion that the United States is governed by a set of rules intended to apply equally to everyone is pretty basic. It's not a Red, Blue, Whig, or Libertarian party issue."

when educating those who ask for the benefit of our profession's wisdom.

Lawyers need to take the lead and use our expertise in discussions about the rule of law with clients, family, and friends. We were trained to give advice, and we love to be heard. However, breaking down the rule of law for one not trained in the law, or for a non-courtroom-based lawyer for whom Con Law is a distant memory, is not always as straightforward as I thought.

The jumping off point when discussing the rule of law is constructing a straightforward definition.

WHAT IS THE RULE OF LAW?

At first blush, it seems that defining the rule of law is elementary. But

I found myself floundering for an answer to the "what is it" question that I liked—a response that flowed like a final argument, or an elevator speech pitching an idea. Like any litigator, I have been quick to contrive a definition of the rule of law when given the opportunity. I was, of course, pleased with it. But at the same time, I was unsatisfied with my ability to succinctly define the concept.

The United States Courts website wasn't much help. It defines the rule of law as "a principle under which all persons, institutions, and entities are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights principles." This is too lawyer-like. Not fluid or casual

enough to be used in a discussion over a beer.

Oxford's definition takes a different approach: "the restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws." Big words that sound like they came from a dictionary or a law professor.

The ABA's definition, "[t]he rule of law is a set of principles, or ideals, for ensuring an orderly and just society," is more to the point. But I wanted to add more to it.

THE RULE OF LAW APPLIES TO ALL

Dwight Eisenhower summed up this concept. "[T]he rule of law... ensures justice between man and man, however humble the one and however powerful the other. A man with five dollars in the bank can call to account the corporation with five billion dollars in assets—and the two will be heard as equals before the law."

The mere definition of the idea of the rule of law is only half the conversation. The tougher part of the conversation these days is how the rule is applied. There are people in positions of authority, various news sources, and corners of the internet suggesting that, for some, the rules don't apply and court orders may be ignored. It is here that we need to be at our most convincing. The rules apply to everyone.

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There are plenty of examples and arguments that suggest the law favors some over others. But the ideal of equality in the law's application has always been the aim.

It seems elementary that the system by which the rule of law was established applies to everyone equally. Poor, wealthy, citizens elected to public office, those charged with enforcing the law, those charged with crimes, or everyday folk going about their business are ensured equal justice, as Ike said. The notion that some may ignore the law that has surfaced and threatens to become mainstream is testing boundaries in ways not seen before.

Fashioning a credible, impassioned argument that the Constitution allows for two sets of rules is, well, not credible.

THE PROCESS OF CHANGE

Rules can be a nuisance. We can't live with them—we can't live without them. There are times when regulations seem arbitrary, nonsensical, or unfair. Nonetheless, people generally follow regulations and court orders.

Proposing a change to those rules that need tweaking, rather than ignoring or bending them, is the proper solution. The court will decide if litigating an issue is the avenue for seeking change or clarity. Taking an appeal of an adverse ruling, then living with the court's final say, is a time-honored component of our system of laws.

There are ways to express opposition to rules or to seek change. The notion of doing so within the established system should also be a part of a conversation about the rule of law.

"The notion that some may ignore the law that has surfaced and threatens to become mainstream is testing boundaries in ways not seen before."

TAKE THE LEAD

People take cues from those in positions of authority. Despite the abundance of lawyer jokes suggesting we're expendable, our advice is sought after. That's why friends and family may ask for your opinion on the rule of law.

The culture of a business, the policies of your local police department, and the values of a family reflect those of their leadership. The cultural leaders in guarding, nurturing, and developing our system of laws are lawyers and judges. It is our responsibility to ensure that nearly 250 years of this culture are preserved and improved upon. Taking every opportunity, no matter the size of the audience, to lead by sharing the importance of the rule of law should not be missed.

GO FORTH AND EDUCATE

If the rules do not apply to those in charge, do they apply to anyone? We can have rules—or not. But if we have *no* rules for some, there are *no* rules for anyone. That's a place we don't want to be.

When a family member, colleague, or friend asks, "What is the rule of law?" I've settled on *the rule of law is a set of rules that apply equally to everyone to ensure an orderly society*.

Polish your message on the rule of law and share it with all who will listen. ☯

Kevin McGoff is an attorney and the author of Find Your Landing Zone—Life Beyond the Bar, Chicago: ABA Book Publishing (2023), available on Amazon.

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MAY JUDGES TALK ABOUT THE RULE OF LAW? YES—WITH CARE

By Charles G. Geyh



Unlike other lawyers, judges are subject to a code of conduct that imposes an ethical obligation to “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.”¹ The general, “macroethics” principles of independence, impartiality, and integrity are elaborated upon in more specific, “microethics” rules throughout the remainder of the code.² This regulatory structure frames what judges can, should, and must not say in public conversations about the rule of law.

ETHICS RULES ENCOURAGING JUDICIAL ENGAGEMENT IN RULE OF LAW CONVERSATIONS

A comment accompanying Code Rule 1.2 states that judges “should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice.”³ Comments accompanying Rule 3.1 add that “judges are encouraged to engage in appropriate extrajudicial activities” because they are “uniquely qualified” to speak, write, and teach on matters “that concern the law, the legal system, and the administration of justice,” and because such activities “further[] public understanding of and

"Thus, judges not only may, but *should* have conversations with the communities they serve about the administration of justice, which subsumes the rule of law."

respect for courts and the judicial system."⁴ Thus, judges not only may, but *should* have conversations with the communities they serve about the administration of justice, which subsumes the rule of law.⁵ Corroborative of these rules, one study has found that extrajudicial, rule of law rhetoric by individual Supreme Court justices can "powerfully influence" public support for the Court.⁶

ETHICAL LIMITS ON JUDICIAL ENGAGEMENT IN RULE OF LAW CONVERSATIONS

At the same time, when engaging in community outreach that the code encourages, "the judge must act in a manner consistent with this code."⁷ And the code imposes restrictions germane to judges who engage in public discussions on rule of law topics to ensure that they do not do so in ways that could compromise macroethics principles.

The code thus declares that a judge "shall not" engage in extrajudicial speech or conduct "that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality."⁸ Judges must disqualify themselves from cases in which their "impartiality might reasonably be questioned,"⁹ and shall not engage in extrajudicial activities that will lead to "frequent disqualification."¹⁰ When touching upon hot-button topics with political implications, extrajudicial statements indicative of partisan

prejudice can be disqualifying, to the extent that such statements betray bias for or against a party, or cast doubt on the judge's open-mindedness in relation to a given issue.¹¹ When illustrating rule of law principles, judges must take care not to make "any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court"—bearing in mind that state high courts often err on the side of concluding that extrajudicial comments on the merits of pending or impending cases can affect their fairness.¹² And with respect to their own decision-making, judges may commit themselves to uphold the law (as the code requires them to do¹³), but must avoid making "pledges, promises, or commitments that are inconsistent

with the impartial performance of the adjudicative duties of judicial office"¹⁴—meaning that they must not promise to resolve contestable issues in particular ways.

PLATFORMS FOR DISCUSSING THE RULE OF LAW

The code of conduct explicitly or implicitly authorizes judges to engage in rule of law education in an array of settings. They may address such topics from the campaign stump; when speaking to prospective jurors; when school children visit the courthouse or when judges visit schools; when giving speeches to civic, fraternal, educational, religious, or charitable organizations; when appearing before governmental bodies; or when teaching or writing.

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Then there is social media. When discussing rule of law topics on social media, judges must be ever mindful of their duty to “act at all times” in a manner that promotes public confidence in their impartiality. Every post and comment they make is presumptively public and permanent (privacy settings and delete functions notwithstanding). Judges must be alert to how their statements can be perceived and who they friend, follow, like, and engage.¹⁵ But if judges are serious about contributing to rule of law conversations in meaningful ways, cautious resort to social media can be invaluable.

HOW TO ENGAGE THE PUBLIC ON RULE OF LAW TOPICS

In the past, cheerleading for the rule of law while sidestepping controversial issues that could thrust judges into the partisan fray, and thereby undermine public confidence in their impartiality, was relatively easy. But recently,

that task has been complicated by forces that have politicized the rule of law itself. Judges who are understandably concerned about becoming embroiled in partisan confrontations on controversial issues when discussing the rule of law can reduce that risk by taking more historical, reportorial, and theoretical tacks. Here are a few random ideas:

From the perspective of history, judges can discuss the western origins of the rule of law dating back to Aristotle, who explained that “we do not allow a man to rule, but the law,” because “desire... twists rulers even when they are the best of men.”¹⁶ They can cite the framers of the U.S. Constitution, who implemented the rule of law via checks and balances between three separate and independent branches of government, to encourage “ambition... to counteract ambition,”¹⁷ and who enabled the judiciary to keep the other branches in check through judicial review.¹⁸ Congress and the president are within their rights to test the limits of their constitutional authority, but judges can point to the foundational case of *Marbury v. Madison* for the proposition that it is the courts’ responsibility to say what those limits are.¹⁹ And judges may note that to preserve the rule of law in relation to the governed, the Constitution embraces a right dating back to the Magna Carta, prohibiting the government from depriving a person of life, liberty, or property without due process of law.²⁰ Given these historical understandings, when courts issue orders restraining the other branches from exceeding their constitutional authority, they are not going rogue—they are doing their jobs (without disputing that

judges are subject to criticism and reversal when they err).

To avoid embroiling themselves in contentious arguments on the merits of specific cases, judges can discuss the rule of law in more reportorial ways. For example, they can quote the due process clauses of the 5th and 14th amendments, and report that those clauses unambiguously apply to all “persons,” not just “citizens”—which a unanimous Supreme Court recently reiterated—at the same time reporting that the process “due” is context dependent.

Finally, from a theoretical perspective, the relationship between the branches can be analogized (imperfectly) to the game of rock, paper, and scissors, which depends on each player having the power to constrain and be constrained by another. The rules of the game were established in our Constitution by framers who intended those rules to limit the power of democratically elected leaders. Those who argue that when the people elect “rock,” principles of majority rule dictate that rock should be authorized not only to break scissors but to crumple paper, must understand that ours is a *constitutional* democracy, in which the Constitution itself embodies the enduring will of “we the people.” If the people wish to change the rules of the game, they may do so, but to ensure that more than a fleeting majority supports the change, they must comply with the rigors of the constitutional amendment process.

In an era when they are frequent targets of criticism, judges should participate in civic education on the rule of law topics with caution. But it is vital to public confidence in the administration of justice that they participate. ☯

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20. Magna Carta, Cl. 39.

BRIDGING THE CIVICS GAP: INDIANA BAR FOUNDATION AND THE LEGAL PROFESSION IN ACTION

By Abigail Hopf



Today's conversations around the rule of law, judicial independence, and public trust often trace back to one chokepoint: civic education.

"The more people learn about civics and the role active, engaged citizens play in that process, the more they appreciate and respect the institutions of government," says Indiana Bar Foundation President and CEO Charles Dunlap. "It's the lack of knowledge that erodes trust in the system."

In an era of polarization and misinformation, a clear understanding of how our government works is crucial. National trends show a decline in civic engagement and public trust.¹ Indiana itself is also under strain: In 2020, Indiana ranked 46th in the nation in voter turnout; by 2024, that number had only slightly increased to 41st.² Disparities in educational access, civic apathy, and lack of engagement with public officials only add to the problem.³

Legal professionals play a unique role in bridging this knowledge gap. As trusted figures in their communities, lawyers and judges can humanize the legal system, model civic engagement, and restore public trust through direct participation in civic education programs.

INDIANA'S CIVIC LANDSCAPE

The Indiana Civic Health Index (INCHI)—a biannual publication analyzing national trends in civic health—provides a snapshot of civic engagement across the state. The 2023

"As trusted figures in their communities, lawyers and judges can humanize the legal system, model civic engagement, and restore public trust through direct participation in civic education programs."

INCHI paints a community that is not actively engaged with public leaders, has limited exposure to the media, and is less able to adapt to change in a way that supports civic participation.⁴

In general, Indiana is:

- **Aging:** Only 22.9% of Hoosiers are under the age of 18.⁵
- **Trailing in education:** In 2022, 90% of Hoosiers had a high school diploma, placing us 35th in the nation).⁶
- **Trailing in median household income:** In 2023, Indiana's median household income sat at about \$69,500, placing us 37th in the country.⁷

These characteristics lead to several challenges in Indiana's civic health, including:

- **Low voter registration and turnout:** Especially among young Hoosiers. In the 2020 general election, Indiana ranked last in voter registration for ages 18–19.⁸
- **Limited political engagement:** A lack of contested elections, election administration policy choices, and a general feeling of "My vote doesn't matter" all discourage participation.⁹
- **Educational and socioeconomic barriers:** In general, both a higher educational background and a higher socioeconomic status are tied to increased civic

engagement. Indiana lags behind other states in both areas.

"But there are other things that Indiana is above average in," Dunlap noted. Indiana ranked high in online political expression, group membership, and volunteerism.¹⁰

In short, while Hoosiers value community, they are disconnected from formal participation due to polarization, civic apathy, and political inclusivity—a gap that quality civic education programs can help close.

THE FOUNDATION'S EFFORTS

The Indiana Bar Foundation (the Foundation) is a statewide leader in expanding civic education. Through partnerships, policy work, community initiatives, and education programs, they are strengthening the civic infrastructure binding communities and creating multiple points of entry for civic learning.

In the community space, the Foundation has brought together organizations and partners from across the state to collaborate and promote civics, civic education, and civic engagement. They created the Indiana Civics Coalition in 2023 and have hosted annual Indiana Civics Summits every year thereafter.¹¹ They have also formed partnerships and worked with the Indiana General Assembly to support new policies and initiatives aimed at voter registration.

Most of their work, however, focuses on education. "Knowledge is power," says Dunlap. "Being able to put things into context and understand not only the challenges but also the systems and what they're designed to do can address a lot of the issues we're seeing today."

Those programs include:

- **A middle school civics course:** A state-wide, full-semester course for sixth graders. The course was launched in January 2024, making Indiana one of only seven states with such a requirement.¹²
- **We the People:** Teaches high, middle, and elementary school students the history and principles of the American constitutional democracy. Students not only learn about the Constitution, but they put it into practice by simulating congressional hearings and competing at regional and national competitions.¹³
- **Mock Trial:** Introduces Indiana students to the legal system and the judicial branch of government. Students receive a mock legal case, craft arguments, and present them to a panel of attorneys, judges, and community members at competitions.¹⁴
- **Indiana Kids Election:** Helps students understand the role and importance of voting through a mock election process.¹⁵



"In short, while Hoosiers value community, they are disconnected from formal participation due to polarization, civic apathy, and political inclusivity—a gap that quality civic education programs can help close."

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- **A civics seal:** A new initiative where high schoolers earn recognition on their transcripts for attending local meetings, volunteering, and demonstrating civic leadership.

For adults, the Foundation has hosted public Constitution 101 courses, updated resources like *Here Is Your Indiana Government*,¹⁶ and is exploring a Midwest Civics Hub to further civic learning beyond the classroom. They also work strongly with partners to secure funding for their programs and training for all educators, to help mitigate educational disparities across the

"Trust in democracy and the rule of law begins with understanding."

state. "We've had a concerted effort to get into more urban and rural schools, who may not always have the opportunities," says Dunlap. "We try to make it so it's more accessible to schools, more accessible to teachers, and then ultimately to students."

THE LEGAL COMMUNITY'S ROLE

Legal professionals play a crucial role in cultivating a culture of civic awareness. The Foundation offers many opportunities for lawyers and judges to get involved.

- **Judge a competition:** Legal professionals can serve as judges for We the People or Mock Trial.¹⁷ "It's a great way to talk to students, engage with them about the legal system, about the Constitution, and about the practice of law," says Dunlap.
- **Join the Mock Trial Case Writing Committee:** Help develop the fictional cases that students argue in mock trial competitions.
- **Present to students:** Visit classrooms to talk about voting, civic duty, or the legal system—especially around election seasons.
- **Educate teachers:** Act as a content expert during the Foundation's Summer Institute or attend other professional development events for civic educators.

- **Keep an eye out for new programming:** The 250th anniversary of the Declaration of Independence occurs in 2026. The Foundation and other community organizations are already planning educational events around the state. Keep an eye out for how you can be involved.

To volunteer or learn more, visit www.inbarfoundation.org/ volunteer. Or reach out to Dunlap or anyone on the Foundation staff to learn how you can be plugged in.

LOOKING AHEAD

Trust in democracy and the rule of law begins with understanding. By showing up in classrooms, judging student competitions, or mentoring young Hoosiers, legal professionals can serve as ambassadors and stewards of a stronger civic future. It may also inspire students to pursue legal careers: "There's a really good opportunity to use these civic education programs as a potential pipeline to the legal profession," Dunlap shares. "We talk about the legal desert and the need for more legal professionals within the system as a whole. This could be an important component to creating that."

As the 2023 INCHI notes, "Addressing [today's] challenges demands a concerted effort to bridge gaps in resources, enhance educational opportunities, and promote inclusivity to ensure that the

benefits of civic engagement are accessible to all."

Indiana's legal community is uniquely positioned to lead that effort. 🌐

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3. *2023 Indiana Civic Health Index*.
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8. *2023 Indiana Civic Health Index*.
9. *Id.*
10. *Id.* In specific, Indiana ranked 5th in the nation for posting on the internet about social or political views; 16th for group membership; 18th for discussing politics, social, and/or local issues with family members; 21st for volunteering; and 25th for donating to charitable or religious organizations.
11. Learn more about the Coalition and its work at <https://www.inbarfoundation.org/indiana-civics-coalition/>.
12. *Indiana Civic Health Index*.
13. Learn more at <https://www.inbarfoundation.org/we-the-people/>.
14. Learn more at <https://www.inbarfoundation.org/mock-trial/>.
15. Learn more at <https://www.inbarfoundation.org/indiana-kids-election/>.
16. A joint publication between the Foundation and the Indiana Chamber of Commerce, helping Hoosiers better understand their government. It is available free to download at <https://www.inbarfoundation.org/indianagovernmentbook/>.
17. We the People typically takes place in the fall, with a state competition in December. Mock Trial takes place in the spring, with a state competition in March.

FROM THE TRENCHES: BRINGING LEGAL EDUCATION TO INDIANA CLASSROOMS

By Andrew Jones



Legal professionals occupy a pivotal role in addressing legal educational gaps within the state. As Chief Justice Loretta Rush shares, “To be the robe, they have to see the robe.” With Indiana’s legal desert a reality, what if legal professionals came to high school not just for career day, but to collaborate with students and address their legal questions?

The paradigm that law permeates every aspect of life drives the course structure of Law Education, an introductory course I teach at Fishers High School in Fishers, Indiana. The elective semester course is designed to establish foundational legal knowledge for students in grades 10–12. Content is as follows:

UNIT 1: LEGAL FOUNDATIONS

Principles of Rule of Law, Legal Values and Advocacy, Court Structure, Human Rights

UNIT 2: CRIMINAL LAW

Criminal Justice System Procedural Sequence (culminating in a student-directed mock trial)

UNIT 3: TORT LAW

Torts and Their Defenses

UNIT 4: CONSUMER & CONTRACT LAW

Consumer Protection, Contract Formation and Negotiation

UNIT 5: FAMILY & ESTATE LAW

Marriage, Divorce, Custody, Parental Rights Termination, Estate and Living Wills

UNIT 6: ENVIRONMENTAL LAW

Environmental Legislation and Rights

"Students practice critical thinking, collaborate with legal professionals, and acquire legal knowledge. Some even begin to see themselves pursuing a career they may have initially thought beyond their reach."

The course concludes with a capstone project requiring students to do in-depth research on a legal topic of their choosing and connect with a legal practitioner that can guide their understanding of the law. These projects have covered a wide variety of law related topics, and surprising benefits have emerged. Students practice critical thinking, collaborate with legal professionals, and acquire legal knowledge. Some even begin to see themselves pursuing a career they may have initially thought beyond their reach. The most rewarding outcomes emerge when students express aspirations as lawyers, case workers, CASA volunteers, or paralegals. Some students leave the course with clearer career direction; all students leave better informed and equipped on legal matters.

One recent student example exemplifies these outcomes.

"When you reach the peak, then what?" A student was asked this question by a trademark attorney during a capstone project discussion. The conversation proved richer and more meaningful than the student had anticipated. This 10th grade student was trying to understand how some clothing producers could copy fashion designs and profit while giving no credit to the designers. What began as a trademark law discussion evolved into meaningful career and life dialogue. She learned much about trademark law and gained a life lesson along the way. Her ambition to be a trademark attorney was made clear, and a mentor connection was made.

Since 2021, over 30 legal professionals have visited the classroom, and more than 600 students have engaged in this course and project. Additional professionals connect digitally to share legal insights. Mentors find themselves surprised by students' legal knowledge and inspired by their eagerness to learn, creating mutually enriching experiences. Legal topics have ranged from immigration and identity theft to advocating for a

change in parenting time guidelines and filing a civil rights claim. One student connected with a mentor from IU McKinney and brought Indiana's first woman to overturn her wrongful conviction to address students at Fishers High School. Others have generated less attention but created equally profound impacts on student learning outcomes.

The course has evolved significantly since 2017. What has emerged is a partial answer to addressing Indiana's legal desert, especially if this course could be included in a statewide career pathway that ends in a law and public policy credential. (For those interested in potential mentoring opportunities, please reach out via LinkedIn or email me at anjones@hse.k12.in.us.) If this course were offered in every high school, there is potential for great statewide impact. Could this be the start to remedying the legal desert and filling the pipeline with future legal professionals? Time will tell... ☎

Andrew Jones teaches Law, Politics, History, and Government at Fishers High School. He enjoys supporting the success of others in and out of the classroom.

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By Cari Sheehan

HOW DO STUDENTS TODAY LEARN ABOUT THE RULE OF LAW?

As attorneys, we are trained to think in legal frameworks. But what happens when the next generation doesn't know what those frameworks are? Increasingly, as an adjunct professor, I have found myself devoting entire classes in business law and legal ethics to explaining the justice system, including the structure of state and federal courts and the basic tenets of civics. This isn't limited to undergraduate business majors. Alarming, over half of incoming law students, many of whom hold degrees in political science, economics, and history, cannot correctly identify the three branches of government or explain the difference between trial and appellate courts in the state and federal system. This knowledge gap is more than a teaching challenge—it's a crisis for the rule of law in our state and beyond.

DEFINING THE RULE OF LAW

An American Bar Association article stated the rule of law is hard to define.¹ It is sometimes referred to as the “government of law” and how laws are publicly promulgated, enforced, adjudicated, and consistent with human rights and norms. The rule of law is not an abstract being, but a group of persons who make up the government and society, striving for an ideal that we normally fail to live up to. Therefore, the rule of law cannot ever be entirely separate from the people who make up our government and society.

The rule of law is not self-sustaining, but it demands access to justice, an independent judiciary, and widespread civic awareness. In Indiana, Rule 6.1 encourages lawyers to provide public interest legal services, which includes educating the public about the legal system.² This ethical mandate creates a shared professional duty to uphold, model, and teach respect for the rule of law.

"This ethical mandate creates a shared professional duty to uphold, model, and teach respect for the rule of law."

GENERATIONAL PERSPECTIVES ON THE RULE OF LAW

Generational perspectives on the rule of law differ markedly. Baby boomers and Generation X, shaped by the Cold War and civil rights movements, tend to view the rule of law as a safeguard against tyranny. By contrast, millennials and generation Z have grown up amid political polarization, systemic inequality, and digital disinformation. As a result, their relationship with authority and legal institutions is more skeptical, sometimes apathetic.

This growing divide is backed by data. According to a 2023 survey by the Annenberg Public Policy Center, only 66% of Americans could name all three branches of government, while 17% could not name a single one.³ When asked to identify rights guaranteed by the First Amendment, 77% named only freedom of speech, while the other rights (freedom of religion, press, assembly, and petition) were largely forgotten.⁴ These gaps are not benign; they directly affect how individuals understand their rights, responsibilities, and legal protections.

Anecdotally, I've encountered students who believed that judges "make laws," that the Supreme Court is part of Congress, and even that "freedom of speech means you can't get fired for what you say at work." These misunderstandings are not rare, they are routine.

Social media complicates the issue. On the one hand, it democratizes access to legal information. On the other hand, it accelerates the spread of disinformation. Platforms like TikTok and Instagram serve as primary news sources for many young people, who may never read a court decision or attend a civic function. Legal educators and ethics experts warn that unchecked misinformation undermines respect for the rule of law and fosters public disengagement from democratic institutions.

THE CURRENT STATE OF CIVIC EDUCATION IN INDIANA

Recognizing this knowledge gap, Indiana has taken legislative action. In 2021, the Indiana General Assembly passed House Enrolled Act 1384, mandating a semester-long

civics course for middle school students.⁵ This course aims to instill a foundational understanding of American democracy, the Constitution, and the role of citizens in maintaining civil society.

The Indiana Department of Education has also revised its academic standards for social studies to incorporate more robust civics content across K–12 curricula.⁶ These updates prioritize critical thinking, constitutional literacy, and analysis of landmark Supreme Court decisions. However, challenges remain. Civics is still frequently overshadowed by the STEM push, and many schools, particularly in rural or underfunded districts, lack access to trained civics educators or current materials.

Programs like the Indiana Bar Foundation's We the People, mock trial, United States Senate Youth program, Indiana Kids Election, and Indiana Legislative Youth Advisory Council (ILYAC)⁷ have had success in filling the gap, but they require volunteer attorney participation to thrive.

THE ETHICAL ROLE OF LEGAL PROFESSIONALS

Our ethical duty as attorneys extends beyond client advocacy. It includes public service. Rule 6.1 of the Indiana Rules of Professional Conduct encourages all lawyers to engage in activities that improve the law, the legal system, and the legal profession. This includes participation in law-related education initiatives.

Organizations and local bar associations offer structured programs that connect attorneys with schools and communities, such as courthouse tours and high school speaking engagements, whereby attorneys can help make the legal system more accessible and transparent.

Whether it's speaking at a local high school, mentoring a civics teacher, or serving as a judge in a mock trial competition, these acts fulfill a dual purpose: They educate the next generation and reinforce public trust in the legal profession.

RECOMMENDATIONS FOR INDIANA LEGAL PROFESSIONALS

Legal professionals in Indiana occupy a unique position of influence and trust within their communities. By

"The rule of law cannot defend itself. It relies on each generation's understanding, respect, and willingness to uphold it."

actively participating in educational initiatives and community outreach, attorneys can help bridge the growing gap in civic knowledge and reinforce the foundational principles of the rule of law. The following recommendations outline practical ways legal professionals can contribute to strengthening civics education and empowering the next generation of informed citizens.

- **Volunteer in Local Schools:** Partner with social studies teachers to give presentations on court structure, constitutional rights, and legal careers.
- **Support Civic Education Nonprofits:** Donate time or resources to groups like the Indiana Bar Foundation and Indiana Center for Civic Education.
- **Encourage High School Civics Requirements:** Advocate for a required high school-level civics course to build upon the new middle school mandate.
- **Host Community Legal Education Events:** Offer public seminars at libraries, community centers, or online platforms to explain legal processes in plain language.
- **Leverage Digital Tools:** Help students navigate legal misinformation online by introducing reliable legal resources and promoting digital literacy.

CONCLUSION

The rule of law cannot defend itself. It relies on each generation's understanding, respect, and willingness to uphold it. Indiana has taken important steps to improve civic education, but the burden cannot fall on educators alone. As legal professionals, we are called—not just by tradition, but by our ethical rules—to engage with our communities and cultivate the next generation of informed citizens.

The future of the rule of law in Indiana depends not only on what is taught in classrooms, but also on what is modeled by the legal community. It's time we all take on a more active role. ☯

With over 15 years of legal experience in civil litigation, conflicts of interest, and professional responsibility, Cari Sheehan serves as Taft's assistant general counsel. In this role, she advises firm attorneys with respect to ethics compliance, risk prevention, and conflicts of interest. In addition, she assists in the review and negotiation of outside counsel guidelines, conflict waivers, and engagement letters, and other items with ethical implications.

Sheehan is an adjunct professor at the IU Robert H. McKinney School where she teaches professional responsibility. She is also a former assistant clinical professor of business law and ethics at the IU Kelley School of Business. She is passionate about promoting ethical awareness, integrity, and professionalism in the legal and business fields and contributing to the advancement of knowledge and practice in these domains.

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PROTECTING THE RULE OF LAW STARTS WITH YOU

No matter where you live, what area of law you practice, or where your beliefs fall, one thing binds this profession together—the oath we took to uphold the rule of law. That oath doesn’t end at the courtroom door. It means defending judicial independence, preserving the right to representation, and protecting the right of all people to be heard.

We hope this issue of *Res Gestae* has offered you new perspectives, reaffirmed your commitment, and inspired you to act. The writers featured have all shared great strategies to protect and promote the rule of law. Below are additional ways that you can get involved.

ATTEND COMMUNITY EVENTS

Look for local rallies, lectures, and programs where the rule of law will be discussed.

- For example, the U.S. District Court for the Southern District of Indiana is hosting “The 14th Amendment, Then & Now” on September 26 at the IU McKinney School of Law. Panelists (including Dr. Kate Masur, Gerard Magliocca, Steve Sanders, and Hon. James P. Hanlon) will be discussing the history of the 14th Amendment and its continued relevance today. A reception with light refreshments will follow the program. Learn more and register at signupgenius.com/go/14thamendment#.

EDUCATE INDIANA STUDENTS

Civic education—ensuring that Hoosiers have a basic understanding of constitutional principles, the legal system, and our government—is key in protecting the rule of law. Legal professionals play an important role in bridging that education.

- **Volunteer as a judge** for We the People, mock trial, or other Indiana Bar Foundation initiatives. Visit inbarfoundation.org/volunteer to see upcoming competitions, learn about new volunteer opportunities, and sign up.
- **Volunteer at your local school.** Partner with a social studies or civics teacher. Work with students on projects similar to Andrew Jones's Law Education course or offer to lead a training for teachers.

- **Get creative.** One recent Leadership Development Academy class worked with county judges and their local Boys & Girls Club to put on a mock trial. Take to social media (in a safe, ethical way) to explain contested legal topics.

MENTOR THE NEXT GENERATION OF LAWYERS

Respect for the rule of law is not a given; it must be valued and actively upheld by each generation.

- **Connect with newly minted lawyers** on ISBA's Mentor City platform. Learn more at inbar.org/mentorship.
- **Speak with current law students** by volunteering at an ISBA etiquette dinner. If you're interested, email Rebecca Smith at rsmith@inbar.org to learn more. Upcoming dates are

August 21 (at Notre Dame) and November 18 (at IU Maurer).

PROVIDE PRO BONO SUPPORT TO YOUR COMMUNITY

If you can provide an opening for individuals to access the legal system and better understand its purpose, you can increase their trust and engagement with it.

- **Volunteer at an ISBA Pro Bono Committee walk-in clinic.** View dates at inbar.org/pro-bono-opportunities.
- **Answer questions through Indiana Free Legal Answers,** a virtual legal advice clinic for civil matters. Get started at indiana.freelegalanswers.org.
- **Check out other volunteer and pro bono opportunities** on Indiana Legal Help's Pro Bono Opportunity Portal, available at app.joinpaladin.com/indiana-legal-help/.

CONTINUE THE CONVERSATION

Have more you want to add to this discussion, or want to read past articles on the rule of law? Visit inbar.org/RuleofLaw to share your thoughts and ideas with other ISBA members.

The rule of law is more than a professional ideal; it is the bedrock of civic life. When the rule of law suffers, we all suffer. When the rule of law is threatened, we are all threatened. But by understanding its importance, honoring its principles, and educating our communities, we can help ensure that it endures. ☯

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01

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03

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PCR AMENDMENTS, RECKLESS HOMICIDE, INDIGENCY HEARINGS, AND MORE

During April and May, the Indiana Supreme Court decided a post-conviction relief (PCR) and life without parole (LWOP) appeal. The Court of Appeals issued opinions addressing belated appeals, indigency hearings, motions to dismiss, and the sufficiency of evidence for reckless homicide, resisting law enforcement, and defense of one's home.

TRIAL COURTS, NOT THE COURT OF APPEALS, AUTHORIZE AMENDMENTS TO PCR PETITIONS

Sixteen at the time of the offenses, McKinley Kelly was sentenced to 110 years for two counts of murder committed in 1996. *Kelly v. State*, 257 N.E.3d 782, 791 (Ind. 2025). After denial of his direct appeal, petition for post-conviction relief, and habeas petition, he filed a pro se successive petition for post-conviction relief in 2019 arguing that his sentence was unconstitutional under provisions related to sentencing juvenile offenders. *Id.* at 791-92. The Court of Appeals authorized the successive petition, which was later amended by lawyers from the State Public Defender and ultimately denied by the trial court.

The Indiana Supreme Court resolved a split in panels in concluding that post-conviction trial courts may permit amendments to successive petitions; the petitioner doesn't need to secure permission from the Court of Appeals to amend their claims. *Id.* at 794. It relied on the plain language of the PCR rule and efficiency concerns, noting that a post-conviction court will be more familiar with the matter. *Id.* at 795.

The justices rejected Kelly's state and federal constitutional challenges and the claim that his sentence was inappropriate based on the nature of his offenses and his character. Nevertheless, it pointed to a recent amendment to the sentence modification statute that permits "juvenile offenders like Kelly a right to have their sentences reexamined after twenty years," at which point the trial court will have evidence of his "rehabilitative successes or failures." *Id.* at 790 (citing Ind. Code § 35-38-1-17(n)).

CONVICTIONS IN LIFE WITHOUT PAROLE APPEAL (LWOP) AFFIRMED

Most LWOP cases are appealed directly to the Indiana Supreme Court. Like nearly every other LWOP appeal, the justices unanimously affirmed in *Crossland v. State*, 256 N.E.3d 517 (Ind. 2025), a case involving two challenges to the convictions and no challenge to the sentence imposed.

The court first considered her claim of a partial jury, rejecting her argument for a change of venue based on negative pretrial publicity because there was no evidence the jury was unable to render an impartial verdict. Next, it found the defendant was not denied an impartial jury by the trial court's denial of several challenges for cause. Each of the "prospective jurors who initially expressed reservations were rehabilitated through additional questioning." *Id.* at 526. Therefore, the trial court did not "force" Crossland to use her peremptory challenges at the expense of removing a juror she found objectionable. *Id.*

Second, the court found no reversible error in the trial court's limitations on her ability to impeach a witness called by the defense. Although defendants have a constitutional right to present a complete defense, the right is limited by the rules of evidence. The hearsay nature of the evidence justified its exclusion, and any error in excluding the evidence was harmless based on the "overwhelming" evidence of guilt. *Id.* at 528.

COURT OF APPEALS' OPINIONS

DIVIDED PANEL ALLOWS BELATED APPEAL

In *Clemons v. State*, No. 24A-CR-1601, 2025 WL 1387415 (Ind. Ct. App. May 14, 2025), a defendant seeking to appeal the revocation of his probation wrote to the trial court to request appointment of counsel before the thirty-day deadline for filing a notice of appeal, but the letter was received after the deadline. The trial court appointed counsel, who filed a "Motion to File Belated Notice of Appeal," which was granted by the trial court.

The majority rejected the state's request to dismiss the appeal based on the untimely Notice of Appeal. Appellate Rule 1 permits "deviation" from the strict application of the appellate rules, and Indiana's appellate courts have recognized that "procedural rules are merely means for achieving the ultimate end of orderly and speedy justice." *Id.* at *2. The appellate court reasoned that Clemons' letter reached the trial court late based on "reasons largely beyond his control" and there would be no prejudice to the state from the "relatively brief delay" in the appeal. *Id.* at *3. Moreover, addressing the merits would promote interests of judicial economy and bringing finality to proceedings; dismissing this appeal could lead to a post-conviction petition causing delay and additional costs to the taxpayers. *Id.*

Judge May dissented, noting that Clemons had not responded to the state's cross-appeal or otherwise offered a cogent argument on appeal for reinstating his forfeited appeal. *Id.* at *5.

INADEQUATE INDIGENCY HEARING

In *Maze v. State*, No. 24A-CR-2596, 2025 WL 1510885 (Ind. Ct. App. May 28, 2025), the state conceded that the trial court failed to conduct a proper indigency hearing when it denied the defendant's request for appointed trial counsel in his misdemeanor case. Relying on recent Indiana Supreme Court authority, the Court of Appeals reiterated that trial courts "must consider three distinct items—assets, income, and necessary expenses," and it would reverse if "one of the mandatory factors" was passed over—especially "the defendant's income or necessary expenses"—or (2) the trial court's inquiry was "unreasonably superficial[.]" *Id.* at *2 (quoting *Spells v. State*, 225 N.E.3d 767, 778 (Ind. 2024)).

Although the defendant Maze had about \$3,000 in savings, was unemployed and currently without income, and might be able to re-enter the workforce, reversal was required because the trial court failed to make an adequate inquiry into his necessary expenses. *Id.* at *3.

CAN A MOTION TO DISMISS RELY ON A PROBABLE CAUSE AFFIDAVIT?

In *State v. Dickens*, No. 24A-CR-1912, 2025 WL 1300140 (Ind. Ct. App. May 6, 2025), *reh'g denied*, the Court of Appeals reversed a trial court's dismissal of two counts of possession with intent to deliver a controlled substance, Tetrahydrocannabinols ("THC"). The appellate court agreed with the state that dismissal was improper because the charging information, taken as



true, alleged valid criminal offenses; it declined to look beyond the charging information itself and consider the probable cause affidavit. *Id.* at *3.

Other panels have held otherwise when reviewing a motion to dismiss, noting they would “consider both the charging [i]nformation and the probable cause affidavit to determine whether the alleged facts constitute an offense.” *Basso v. State*, 244 N.E.3d 439, 443 (Ind. Ct. App. 2024) (quoting *State v. Sturman*, 56 N.E.3d 1187, 1198 (Ind. Ct. App. 2016).

RECKLESS HOMICIDE CONVICTIONS AFFIRMED

In *Rakhimov v. State*, 260 N.E.3d 263 (Ind. Ct. App. 2025), the Court of Appeals affirmed two reckless homicide convictions against a truck driver who violated the federal safety regulations for commercial drivers and drove his truck in a fatigued and distracted state, as evidenced by driving data and his slow reaction time in applying his brakes as he looked at his GPS while approaching a busy intersection at over fifty miles per hour.

In *Weaver v. State*, 258 N.E.3d 1048, 1060 (Ind. Ct. App. 2025), the Court of Appeals affirmed a conviction against a driver who had been “whipping” his vehicle between lanes and approached the red light where the victim’s vehicle was stopped at speeds of at least twenty miles over the speed limit, which was a “substantial departure from acceptable standards of conduct.”

RESISTING LAW ENFORCEMENT CONVICTION REVERSED

Indiana courts have long held that a person “forcibly resists” law enforcement only “when strong, powerful, violent means are used to evade a law enforcement

official’s rightful exercise of his or her duties.” *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). In *K.B. v. State*, No. 24A-JV-2508, 2025 WL 1416837, at *3 (Ind. Ct. App. May 16, 2025), the Court of Appeals reiterated that an “officer’s use of force in response to passive, or even some active, resistance is not evidence of forcible resistance.” Although K.B. refused to turn around when directed by the officer, the officer is the one who used force to get K.B. to comply. Without evidence of forcible resistance by K.B., his adjudication was vacated. *Id.*

SUFFICIENT EVIDENCE TO REJECT DEFENSE OF PROPERTY CLAIM

In *Norton v. State*, No. 24A-CR-2330, 2025 WL 1403537 (Ind. Ct. App. May 15, 2025), the defendant co-owned a home with his fiancée, whose college-aged daughter sometimes returned home. One evening, Norton ordered the daughter’s boyfriend to leave the home and used force when he refused.

The Court of Appeals found sufficient evidence to rebut Norton’s claim of defense of habitation. Although Norton claimed the boyfriend was a trespasser, his fiancée had given him permission to be in the home, which meant the boyfriend had a “fair and reasonable foundation for believing he ha[d] a right to be present” and was not trespassing. *Id.* at *4. Moreover, Norton did not give the boyfriend reasonable time to leave the home and his use of force—grabbing the boyfriend by his arm and pushing him into a staircase banister, and attempting to push him down the stairs—“was not reasonable in light of the urgency of the situation, as [the boyfriend] was peacefully standing at the top of the stairs.” *Id.* ☞

By Maggie L. Smith and
Tony M. Powers



CIVIL CASES DISCUSS NEW APPROACH FOR APPEALS OF TEMPORARY COMMITMENTS, MORE

The Indiana Court of Appeals issued 34 published civil opinions in April and May 2025. The Indiana Supreme Court issued four civil opinions during this time.

SUPREME COURT OPINIONS

Supreme Court reconsiders its prior approach and holds that “temporary commitments—like criminal convictions and child-in-need-of-services judgments—implicate both substantial liberty interests and lifelong collateral consequences for the individuals involved, warranting an opportunity for appellate review on the merits.”

In *J.F. v. St. Vincent Hospital and Health Care Center, Inc.*, 256 N.E.3d 1260 (Ind. 2025) (Rush, C.J.), the Indiana Supreme Court revisited its earlier ruling that left the decision on whether court orders temporarily confining people in facilities for mental health treatment—which expire before the appeal is resolved—fall within the public interest exception to the mootness doctrine to be “applied on a case-by-case basis.”

Noting that this case-by-case approach has resulted in appeals being treated “in inconsistent and disparate ways, often declining to review the merits by dismissing them as moot,” the court held the discretionary framework “has proven inequitable and inefficient” and “we remedy these failings by taking a new approach.”

Recognizing that “temporary commitments—like criminal convictions and child-in-need-of-services judgments—implicate both substantial liberty interests and lifelong collateral consequences for the individuals involved, warranting an opportunity for appellate review on the merits,” the court held that, going forward, “the order’s expiration does not moot a timely

appeal unless the appellee establishes the absence of any collateral consequences.”

Justice Slaughter concurred, writing separately to present his conclusion that: (1) the “public interest” exception to mootness does not apply to “our state constitution’s separation-of-powers mandate” that instead “requires an actual, ongoing controversy between adverse parties”; and (2) “reassigning the burden” from the committed person to the custodian does “not relieve us of our independent duty to ensure the matter before us remains a live, justiciable controversy.”

Unanimous Supreme Court addresses the implied warranty of merchantability for the sale of goods and holds a buyer must give the seller a single opportunity to “cure” any defect through repair, replacement, or refund.

A buyer purchased a used car from a dealer and received two documents: (1) a “Buyers Guide” providing the car was being sold “as is” with no warranty; and (2) a “Sales Agreement” containing a disclaimer of warranties unless a “written warranty or service contract” was extended within 90 days. The service contract, however, declared the Buyer’s Guide “overrides any contrary provisions” in the Sales Agreement.

The same day the buyer purchased the car, she also purchased a service contract, and this was noted on the “Buyers Guide.” The car soon broke down and was declared unfixable by a repair shop. The dealer refused to arbitrate the matter and the buyer sued for breach of implied warranty of merchantability.

A unanimous Supreme Court in *Thomas v. Valpo Motors, Inc.*, 258 N.E.3d 236 (Ind. 2025) (Goff, J.) began by noting that state law requires any warranty disclaimer by the seller to be clear and conspicuous and the federal Magnuson-Moss Warranty Act (or MMWA) provides consumers with a right of action to sue for damages and attorney’s fees when the seller breaches the implied warranty, provided there has been a reasonable opportunity to cure any failures.

The court held “This variation between the two documents—disclaimer without exception under the Buyers Guide and disclaimer with certain exceptions under the Sales Agreement—triggers the Sales Agreement’s conflict clause, rendering the terms of the Buyers Guide controlling.” But the court then held the Buyers Guide failed to effectively disclaim the implied warranty of merchantability.

The court then addressed whether there had been a reasonable opportunity to “cure” the problems with the car. The court noted that “cure” does not mean repair; cure “denotes a process of restoration, which may include repair, replacement or refund.” The court also rejected dealer’s argument that the MMWA required it be given two opportunities to cure: “in claims alleging breach of implied warranty, a buyer need only show to the satisfaction of the factfinder that the seller had ‘a reasonable opportunity to cure’ its failure to comply with its warranty obligations. And the buyer can meet this burden of proof by showing that he explicitly asked the seller to cure (i.e., repair, replace, or refund) or that he notified the seller of the purported defect and the seller proposed no remedy in response.”

Supreme Court majority abrogates *Griffin v. Menard* and holds that, in premises liability negligence cases involving fixtures, a plaintiff does not need to first establish that the defendant had actual and constructive knowledge of the fixture’s defect before the doctrine of *res ipsa loquitur* can be applied.

A student was studying for her final exams in a building on the Indiana University Bloomington campus when a window fell inward out of the wall and landed on her head, causing injuries. The university found no defect with the window or its casing. The student sued the university under the doctrine of *res ipsa loquitur*, which is “a rule of circumstantial evidence that may be used to infer negligence from certain types of accidents that typically do not happen without someone’s negligence.”

A majority of the Supreme Court in *Isgrig v. Trustees of Indiana University*, 256 N.E.3d 1238 (Ind. 2025) (Massa, J.) held the case could proceed to trial and outlined the governing law related to the *res ipsa loquitur* doctrine. The court began by tracing Indiana’s history of applying this doctrine in premises liability cases involving fixtures and held: “To rely on *res ipsa loquitur*, the plaintiff must still present evidence that (1) the injuring instrumentality is under the exclusive control of the defendant, and (2) the accident is one which in the ordinary course of things does not happen if those who control the instrumentality use proper care.”

But the court abrogated *Griffin v. Menard, Inc.*, 175 N.E.3d 81 (Ind. 2021) and held that if “the injuring instrumentality is a fixture and if the plaintiff is relying on *res ipsa loquitur*, they do not need to first establish that the defendant had actual and constructive knowledge of the fixture’s defect,” as *Griffin* had required.

Justice Molter, joined by Justice Slaughter, dissented, concluding the plaintiff made neither showing identified by the court and finding “the Court’s reasoning confuses an inference with the sort of speculation we typically hold is insufficient to defeat summary judgment.”

Supreme Court partially abrogates *Groth v. Pence* and holds that, to qualify as “intra-agency material” for purposes of the “deliberative material exception” in APRA, the record must be one that “originates from, and is communicated between, employees of the same agency.”

A whistleblower alleged that a health center which provides services to indigent and Medicaid-enrolled patients defrauded Family & Social Services Administration (FSSA). As a result of the allegations, the center’s attorney prepared a legal memorandum and submitted it to FSSA for consideration during settlement negotiations between the center and FSSA. The whistleblower filed a request with FSSA for the legal memorandum pursuant to Indiana’s Access to Public Records Act (APRA), but such request was denied based on the “deliberative material exception” in APRA which covers “records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.”

The Supreme Court in *Family & Social Services Administration v. Saint*, 258 N.E.3d 972 (Ind. 2025) (Massa, J.) held the memorandum was not excepted from production because to qualify as “intra-agency material,” the record must be one that “originates from, and is communicated between, employees of the same agency.” In reaching this conclusion, the court abrogated the portion of *Groth v. Pence*, 67 N.E.3d 1104 (Ind.Ct.App. 2017) stating the mere act of “using material within an agency made it intra-agency” under APRA.

Justice Molter concurred, clarifying that while a memorandum that was not created by the agency “does not fall under the deliberative material exemption, derivative materials may still fall under the exemption” in other circumstances.

Supreme Court majority answers certified questions and holds that a property owner is always justified in excluding another from the owner’s premises, unless a statute or contract provides otherwise

The clients of an industrial inspection and sorting company were three subsidiaries that were wholly

owned by a parent. Subsidiary 1 stopped using the company. Subsidiary 2 still wanted to use the company at Subsidiary 1’s facility. Subsidiary 1 refused to allow the company onto its property and the company sued Subsidiary 1 for tortious interference with its business relationships and contracts, claiming Subsidiary 1 acted illegally and wrongfully because Subsidiary 1 “had no justification for barring” the company from its property.

A Supreme Court majority disagreed in *Diamond Quality, Inc. v. Dana Light Axle Products, LLC*, 256 N.E.3d 529 (Ind. 2025) (Slaughter, J.), announcing “a per se rule that, absent a contractual or statutory duty, a property owner is always justified in excluding another from the owner’s premises.” Accordingly, “since exercising the right to exclude is not unjustified, wrongful, or illegal, this conduct cannot support a claim for tortious interference under Indiana law.”

In reaching this conclusion, the court was presented with competing tests from the Second and Third Restatements of Torts but held its resolution “does not require us to choose between the second and third restatements. So, we leave for another day whether to adopt the third restatement, or some other test, to govern claims for tortious interference.”

Justice Goff dissented and would hold “(1) a plaintiff may bring a claim for tortious interference with contractual and business relationships when a defendant has allegedly induced its own sister subsidiary to breach if the subsidiaries are not united in interest, and (2) the Restatement (Second) of Torts § 767 applies when determining whether a defendant is justified in interfering with a contract.”

SELECTED COURT OF APPEALS DECISIONS

- *Bowen v. Bowen*, 2025 WL 1537051 (Ind.Ct.App. 2025) (Vaidik, J.) (“[T]he pension payments that accrued during Husband’s DROP period constitute marital property to the extent they were earned during the marriage.”)
- *Anonymous Child I v. Anonymous Physician*, 2025 WL 1403784 (Ind.Ct.App. 2025) (Brown, J.) (“[A] genuine issue of material fact exists as to when Child learned of facts that would have led a person of reasonable diligence to have discovered the malpractice...Accordingly, we reverse the trial court’s entry of summary judgment based on the statute of limitations.”)

- *Rokita v. Board of School Commissioners for City of Indianapolis*, 2025 WL 1416763 (Ind.Ct.App. 2025) (Bailey, J.) (“Neither SEA 270 nor the State’s reply brief make any mention of the necessary police power, let alone the claimed objective sought to be achieved by the retroactive impairment of the Board’s (and VOICES’) contractual rights and obligations. Based on the foregoing, we conclude that SEA 270’s revocation of SEA 391’s Dollar Law exemption violates Article 1, Section 24 of the Indiana Constitution with respect to the contractual relationship between the Board and VOICES regarding Bellamy 102 and is therefore void as applied to that transaction.”)
- *City of Boonville v. Anderson*, 2025 WL 1510553 (Ind. Ct.App. 2025) (Najam, S.J.) (“Neither party has won the underlying case, and the outcome of a ‘later hearing’ on whether the TRO was wrongful will not turn merely upon the fact that the TRO was dissolved. To obtain an award of damages, Boonville must prove by a preponderance of the evidence that it is entitled to prevail in ‘a subsequent hearing on the merits of the case[.]’”)
- *Lammons v. EDCO Environmental Services, Inc.*, 2025 WL 1272845 (Ind.Ct.App. 2025) (Tavitas, J.) (“Lammons voiced her opinion to the elected officials tasked with protecting the public from unfair business practices, and she did so with a legitimate purpose to persuade the City Council to adopt an ordinance clarifying the permit requirements for the installation of boilers. Lammons’ statements do not constitute defamation as a matter of law.”)
- *Estate of Morgan by Hullett v. Morgan*, 2025 WL 1537327 (Ind.Ct.App. 2025) (Weissmann, J.) (The General Wrongful Death Statute (GWDS) “Claim Hullett asserted in her Third Amended Complaint sought to specify ‘other just and proper relief’ for the Tort Claim she asserted in her First Amended Complaint...Because the GWDS Claim that Hullett asserted in her Third Amended Complaint arose out of the same conduct, transaction, or occurrence as the Tort Claim she asserted in her First Amended Complaint, the GWDS Claim related back to the date of the First Amended Complaint under Trial Rule 15(C) and was timely filed.”)
- *State Farm Mutual Automobile Insurance Company v. DiPego*, 2025 WL 1174305 (Ind.Ct.App. 2025) (Weissmann, J.) (“[W]e have little trouble concluding that the Scooter was a ‘land motor vehicle’ under the plain and ordinary meaning of the term.”)
- *Geels v. Flottemesch*, 2025 WL 1119769 (Ind.Ct.App. 2025) (Tavitas, J.) (“Here, the trial court specifically found that David designated Geels as the beneficiary of his ERISA-regulated life insurance policies. The trial court’s consideration of David’s intent in doing so is of no moment under ERISA, and the court’s imposition of a constructive trust based on those factors was clear error.”)
- *TKG Associates, LLC v. MBG Monmouth, LLC*, 2025 WL 1119894 (Ind.Ct.App. 2025) (Tavitas, J.) (“Under the Agreement, Seller was required to provide this documentation regarding the leases during the investigation period, not as a condition precedent to closing. Accordingly, the trial court’s finding regarding conditions precedent is clearly erroneous.”)
- *Zotec Partners, LLC v. Hulsey*, 258 N.E.3d 1017 (Ind. Ct.App. 2025) (Bradford, J.) (“[A] ‘monetary recovery’ is involved when seeking rescission pursuant to the IUSA, but only because money would be received in exchange for a return of the security. That does not make the money ‘legal damages’...The trial court correctly concluded that Zotec, who had chosen to pursue the equitable remedy of rescission, had no right to a jury trial on its IUSA claim.”)
- *Tidd v. Estate of Tidd*, 257 N.E.3d 846 (Ind.Ct.App. 2025) (Weissman, J.) (“[T]o prove application of the Disinheritance Statute, the party seeking to apply the Statute must establish by clear and convincing evidence two requirements: (1) that the surviving spouse abandoned the other spouse—that is, they physically separated without mutually consenting to the separation; and (2) the separation was without just cause. If either of these requirements is not met, the Disinheritance Statute does not apply.”) (¶)

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