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# RES GESTÆ

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*Reentry as a Human Rights Issue: Policy Considerations in Indiana's Criminal Justice System*  
By John Vance

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## President's Perspective

# JUSTICE, INDEPENDENCE, AND SUNDAY SUPPERS: A CONVERSATION WITH CHIEF JUSTICE LORETTA RUSH

By Michael Jasaitis

### PRESIDENT'S PERSPECTIVE

As the first female chief justice in Indiana's history, Chief Justice Loretta Rush has led our state's judiciary with remarkable vision. I was honored to sit down with her for a discussion on her journey to the bench, the role courts play in Indiana's legal system, and the challenges facing us today.

#### A CHIEF JUSTICE'S JOURNEY

Justice Rush understands the importance of being Indiana's first female chief justice. "It marks a significant milestone in Indiana's history and highlights the progress from times when few women were in the judiciary. Representation matters tremendously for female law students and lawyers." That significance hasn't lessened in her nearly 3,900 days as chief justice. "I have a sense of disbelief and gratitude for my role," she said. "It's been an honor to represent Indiana's judiciary and legal profession with passion."

Yet her path to the bench was anything but predetermined. "I decided to pursue law last minute during my senior year of college after being inspired by a constitutional law class," she shared. "I entered law school without prior exposure to lawyers or judges." What drew her to the profession? "I love applying law to complex situations to find order. It's about bringing order out of chaos."



This drive to bring order and purpose has remained central throughout her career, guiding her interactions with the public and her judicial philosophy. "I display pictures from judicially involved youth to remind myself of the court's impact," she shared. "I always wear robes to maintain respect for the judicial position and ensure all voices are heard at the end of hearings, especially in juvenile court."

Justice Rush's influence extends well beyond Indiana. She was appointed by Chief Justice John Roberts to the Judicial Conference Committee on Federal-State Jurisdiction in 2019, co-chaired the National Judicial Opioid Task Force, and served as President of the Conference of Chief Justices.

Behind her professional accomplishments, Justice Rush finds strength in personal connections. "I'm inspired by my husband," she said, "who has supported me throughout my judicial career. The grounding provided by my family has been invaluable."

When asked about her life outside the courtroom, Justice Rush revealed a rich tapestry of personal interests: "I enjoy reading, cooking, and hosting Sunday suppers. Spending time with my grandchildren brings me tremendous joy." She added with



## INDIANA'S JUDICIARY AND ADDRESSING CRITICAL CHALLENGES

When asked about Indiana's judiciary, Chief Justice Rush expressed pride: "We have a strong relationship between the bench and bar. Indiana's advanced court technology and unified case management system are among the best in the nation." She added, "I'm particularly proud of our merit-based selection process for judges and our focus on training judges on substance abuse and mental health issues."

"Respect, timeliness, efficiency, and transparency are priorities in our judiciary," she emphasized; but that doesn't mean Indiana's legal system is without its challenges.

Chief Justice Rush spoke candidly about declining public faith: "Public trust in the judiciary has declined, and there are growing concerns about judges' safety and respect for government institutions."

She expressed particular concern about access to justice. "We face serious issues with unrepresented litigants and unmet civil legal aid needs. The judiciary's role is evolving in addressing treatment and support for individuals who come before us."

But under Chief Justice Rush's leadership, Indiana has made significant strides in expanding access to justice. "We merged multiple committees into the Coalition for Court Access and doubled civil legal aid funding through legislative efforts," she explained. "We've implemented mandatory pro bono reporting to address lawyer shortages and emphasized plain language in court proceedings to reduce trauma, especially for youth."

**"We have a strong relationship between the bench and bar. Indiana's advanced court technology and unified case management system are among the best in the nation."**

enthusiasm, "I'm also quite active—hiking and biking are favorite activities, and I'm deeply involved in church activities."

I discovered the Chief Justice has a playful side too. "I found humor in ethics presentations featuring my cousin Vinnie," she

laughed, referencing the popular legal comedy film. "I enjoy seeing portrayals of legal ethics being taught in an engaging manner." Her sense of humor reflects the human side of a leader often tasked with navigating serious and complex issues facing Indiana's courts.



**"The judiciary constitutes an equal branch of government deserving proper respect and autonomy. The independence of our courts is essential and cannot be compromised."**

"We're advocating for online dispute resolutions and ADR diversion programs. We support the Legal Future Commission's recommendations on expanding legal services to reach more Hoosiers in need."

#### **PARTING ADVICE**

For aspiring lawyers, Justice Rush offered encouraging words. "I mentor young lawyers from diverse backgrounds and encourage taking risks and learning from failures," she told me. "Enter the legal profession with the understanding that you have the opportunity to bring order to chaos and resolve disputes. We're facing an ongoing attorney shortage, and lawyers play a critical role in our democracy." She concluded with a powerful

reminder: "Use your legal skills to positively impact society."

#### **PROTECTING JUDICIAL INDEPENDENCE**

As our conversation drew to a close, I was reminded of the vital importance of judicial independence in our democracy and the ISBA's commitment to upholding the rule of law. The courts are a co-equal branch of our government and must be treated as such.

Justice Rush's leadership exemplifies the values the Indiana State Bar Association holds dear: integrity, accessibility, fairness, and independence. In recent months, we have witnessed concerning rhetoric targeting judges for their rulings. The ISBA stands firmly

in rejecting calls by government officials to impeach federal judges who issue decisions with which they disagree. For more than 200 years, our legal system has afforded individuals the right to disagree with judicial decisions and to appeal them through proper channels. Targeting judges personally or threatening their removal because of their rulings undermines the very foundation of our legal system.

As Chief Justice Rush told me with conviction, "The judiciary constitutes an equal branch of government deserving proper respect and autonomy. The independence of our courts is essential and cannot be compromised." ☎



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# **REENTRY AS A HUMAN RIGHTS ISSUE: POLICY CONSIDERATIONS IN INDIANA'S CRIMINAL JUSTICE SYSTEM**

**By John Vance**

In October 2024, the United Nations adopted the “Resolution on the Right to Dignified Reintegration and Reentry for Former Prisoners.” The resolution frames prisoner reentry as a human rights issue, emphasizing the need to reintegrate into society without discrimination in key areas. While non-binding, the resolution challenges the Indiana legal community to consider whether embedding human rights principles into reentry reform would be beneficial.

#### INDIANA'S CURRENT POLICIES

Toward the beginning, the resolution “emphasizes that the essential aim of a penitentiary system’s treatment of prisoners is the reformation and social rehabilitation of persons released from detention.”<sup>1</sup> Indiana has long adopted the spirit of this principle. In fact, the Indiana Constitution provides, “The penal code shall be founded on the principles of reformation, and not of vindictive justice.”<sup>2</sup>

Indiana’s commitment to reformation is underscored by its implementation of the Indiana Risk Assessment System (IRAS). The IRAS assesses people to determine both an individual’s recidivism risk and criminogenic needs.<sup>3</sup> The IRAS is used at every stage of a person’s journey through Indiana’s criminal justice system, allowing for an integrated approach to service delivery.<sup>4</sup>

During the pretrial phase, the IRAS Pretrial Assessment Tool (IRAS-PAT) is designed to evaluate the risk that someone will fail to appear for court appearances and the risk of committing new crimes while on pretrial release.

The Indiana Department of Correction (IDOC) uses the IRAS Prison Intake Tool (IRAS-PIT) to develop an individualized case plan from the results of the IRAS-PIT assessment to address an incarcerated individual’s criminogenic needs.<sup>5</sup> Incarcerated individuals can receive educational and vocational programs, substance abuse treatment, mental health services, and reentry programs.<sup>6</sup> Prior to release, incarcerated individuals are reevaluated using the IRAS Supplemental Reentry Tool. Theoretically, these evaluations provide an individualized approach to reformation and holistic reintegration.

Finally, the IRAS Community Supervision Tool (IRAS-CST) is used after incarceration while a returning citizen is under community supervision programs, such as probation or parole.<sup>7</sup> Probation is an oversight program

under the auspices of the courts in each individual county. Parole is an oversight program following release from prison, which is an extension of the IDOC. The IRAS-CST evaluates a returning citizen's risk level to determine the appropriate supervision and services, aiming to enhance the likelihood of successful reintegration.

In addition to evidence-based assessments, Indiana passed legislation in 2010 to fund and expand the use of problem-solving courts.<sup>8</sup> Problem-solving courts are specialized judicial systems that integrate a non-adversarial, team-based approach to address underlying issues faced by participants, such as addiction or mental health challenges. These courts provide support to improve justice outcomes.<sup>9</sup> Their focus is on enhancing court processes, promoting rehabilitation, and measuring success through data evaluation.<sup>10</sup>

In 2014, when the criminal code was revised, Indiana reduced the amount of good time credit that could be earned for good behavior and rehabilitative programs.<sup>11</sup> Prior to 2014, most incarcerated individuals could earn up to 50%, meaning they would only need to serve half of their sentence. Now, most are required to serve at least 75% of their sentence. This reduction of earned credit was meant to deter future crime through tougher, more certain penalties.

Despite Indiana's efforts, the recidivism rate has been relatively stable. This raises questions about Indiana's current policies and the systemic barriers to successful reentry that they create.

### THE REALITY OF RECIDIVISM

Over a decade has passed since Indiana implemented the IRAS

and expanded the use of problem-solving courts. Yet, recidivism rates have not shown a marked decrease. The IDOC defines recidivism "as a return to incarceration within three years of the offender's date of release from a state correctional institution."<sup>12</sup> This definition, however, is misleading because it means a return to the IDOC. Omitted from this data are returns to other forms of incarceration, such as periods spent in county jails.

According to data compiled by the IDOC, recidivism rates have hovered in the mid-to-high 30s for the past 20 years. There was a notable decline in 2022 when the rate dropped to 29.79% from the 2021 rate of 33.82%. In 2023, however, the recidivism spiked to 34.78%.

What does this rate mean?

Essentially, one in three will return to the IDOC within a three-year period. In 2023, the IDOC annual report listed the total adult population as being 23,303. The daily cost to keep a person incarcerated is \$76.98. That means the total per diem cost for the adult population was \$1,796,056.94 per day. The annual cost was \$655,626,798.10. Therefore, the annual cost for incarcerating recidivists in 2023 was \$228,536,554.88. Significantly, the actual cost of recidivism in 2023 is lower than the estimated cost based on the average recidivism rate over the last 20 years.

But the costs are likely higher. The IDOC data fails to account for the impact of problem-solving courts, which, according to Chief Justice Loretta Rush's 2025 State of the Judiciary report, have a 93% success rate.<sup>13</sup> This success has not impacted recidivism rates because participants often receive alternative sentences, i.e.,

community-based sentences rather than commitment to the IDOC. Moreover, the data excludes those incarcerated in county jails or released back into the community rather than returning to prison. The IDOC's statistics, therefore, may lead to an incomplete understanding of recidivism and its societal impact.

### WHAT THE DATA REVEALS

The stability of Indiana's recidivism rates amid reforms from both sides of the debate invites the question: What is the underlying cause of this high rate of recidivism?

According to IDOC, technical violations of probation or parole—breaches of the conditions of community supervision that are unrelated to the commission of a new crime—are the most common reason for recidivism.<sup>14</sup> In fact, the average recidivism rate attributable to technical violations within the past five years exceeded 60%. This number is likely higher when one factors in the violations that do not result in a return to the IDOC. Ergo, less than 40% of recidivists committed a new offense.

Returning citizens face many barriers to reintegrating into society. One of the most significant challenges is the interplay between policy mandates and the harsh realities of life. Many of the conditions imposed upon individuals on probation or parole—such as the requirement to maintain a single, verifiable address—are nearly impossible to fulfill due to systemic issues that are deeply ingrained in society. A glaring example of these challenges is the legal discrimination against people with felony convictions, particularly in the realm of housing.

While state policies have fallen short, federal initiatives in the Southern





**"Despite Indiana's efforts, the recidivism rate has been relatively stable. This raises questions about Indiana's current policies and the systemic barriers to successful reentry that they create."**

District of Indiana, like REACH court, offer a model for successful reintegration. Personal engagement and supportive supervision have allowed REACH to significantly reduce recidivism among participants.

#### **REACH: A LOCAL MODEL OF SUCCESS**

The REACH program serves as a compelling example of how a human rights-centered approach can improve reintegration

outcomes. Established in 2007 under the leadership of Judge Larry J. McKinney, REACH—short for Reentry and Community Help—balances accountability with individualized support, fostering personal connections between participants and the judiciary to promote successful reentry.<sup>15</sup>

REACH emphasizes personal engagement. Judges and legal professionals actively participate in the individual's reentry journey.

This approach builds trust, instills confidence, and facilitates success. As Tim Baker, United States Magistrate Judge for the Southern District of Indiana, observed, “making personal connections is a cornerstone of successful reentry.”<sup>16</sup>

The success of the REACH Court is reflected in its impact on recidivism. The federal jurisdiction defines recidivism as any arrest or violation resulting in revocation of supervision.<sup>17</sup> Naturally, the



**"In fact, the average recidivism rate attributable to technical violations within the past five years exceeded 60%."**

recidivism rate is much higher. While the federal recidivism rate is 72%, the recidivism rate among REACH participants is just 36%.<sup>18</sup> Significantly, REACH participants have been assessed as high or moderate risk. These findings demonstrate that a holistic approach can improve reentry outcomes.

For Indiana lawyers, the REACH Court model provides a blueprint for advancing human rights in reentry reform. By advocating for policies that mirror REACH's supportive

framework, attorneys can help dismantle systemic barriers that contribute to recidivism. Additionally, legal professionals can leverage the program's success to challenge discriminatory practices in housing, employment, and supervision. The REACH Court's achievements affirm that when legal professionals invest in returning citizens as individuals, the results are transformative for both participants and the broader community.

#### **HOUSING DISCRIMINATION AND COMMUNITY SUPERVISION: A DANGEROUS DISCONNECT**

One of the most basic needs for any individual is housing. For returning citizens, securing stable housing can be nearly impossible due to longstanding legal barriers. In Indiana, individuals under supervision are legally required to have a verifiable address, but they are simultaneously excluded from many housing opportunities because of their criminal record.



This discrepancy prevents many people from meeting the conditions of community supervision. As a result, they risk being sent back to prison for something over which they have no control.

Such situations highlight a key policy gap: The legal system often imposes requirements that assume access to resources and opportunities that many returning citizens simply lack. For many returning citizens, the current policies limit their access to stable housing. In practice, this system creates unattainable supervision conditions thereby promoting failure.

#### **BROADER POLICY GAPS: THE NEED FOR COMPREHENSIVE REENTRY SUPPORT**

Housing is not the only significant issue; there are other policy gaps related to the reintegration of returning citizens. For example:

- **Employment discrimination:** Employers can legally reject applicants with felony convictions despite qualifications. At the same time, an inability to obtain work directly contradicts the requirement for returning citizens to maintain steady employment. According to the IDOC, financial stability is the greatest predictive factor of recidivism.<sup>19</sup>
- **Mental health and addiction treatment:** Adequate mental health care and addiction treatment programs are often difficult to access. Returning citizens, especially in the beginning, lack resources. Community supervision conditions—such as counseling—are often required. However, returning citizens must be able to pay for those services or risk being incarcerated.
- **Transportation issues:** A returning citizen may be required to attend meetings with their probation officer, drug tests, counseling sessions, etc. They risk a technical violation if they lack access to reliable transportation or a driver's license.

#### **THE NEED FOR REFORM: BRIDGING THE GAP BETWEEN POLICY AND REALITY**

A comprehensive reform strategy is needed that considers systemic challenges for returning citizens. A few recommendations for bridging the divide between legal requirements and systemic barriers include:

1. **Fair housing laws:** New legal protections against housing discrimination for individuals with felony convictions need to be established. Alternatively, develop housing alternatives to accommodate returning citizens.
2. **Supportive reentry programs:** Comprehensive reentry services including job placement assistance as well as mental health treatment and addiction recovery support should accompany parole and probation systems to aid returning citizens in meeting their legal obligations and decrease re-incarceration rates due to technical violations.
3. **Revised probation and parole conditions:** A revision of community supervision conditions is needed to remove technical violations such as fixed address requirements when housing discrimination exists. Using a collaborative approach, this change could create substantial improvements. Supervision officers should focus on understanding the root causes of violations like homelessness or joblessness rather than penalizing

individuals for failing to meet unrealistic conditions. In this way, supervision officers can work with the individual to overcome the barriers they are facing.

Existing supervision systems are often incompatible with returning citizens' real-world challenges. Reentry barriers make legal requirements difficult for individuals to meet. Systemic inequities drive technical violations which lead to recidivism punishments instead of addressing actual rehabilitation failures. Implementing supportive policies that offer flexibility will aid reintegration and promote success.

#### **INCORPORATING HUMAN RIGHTS PERSPECTIVES INTO LEGAL ADVOCACY ON CRIMINAL JUSTICE REFORM**

Drawing inspiration from the UN resolution and the REACH Court's success, the following recommendations provide actionable steps attorneys can take to incorporate these perspectives and drive meaningful reform within Indiana's criminal justice system:

##### **1. Humanizing the Legal Process: A Focus on Dignity and Rehabilitation**

Attorneys can seek reforms that focus on tempering accountability and deterrence with rehabilitation and inherent human dignity. This includes:

- **Promoting dignified treatment:** The treatment afforded to individuals and the resources available to them during incarceration are not separate from reentry; they are critical preliminary stages. Attorneys can advocate for prison reforms through lawsuits or lobbying. Humane treatment and essential services while incarcerated are a cornerstone of successful reentry.





- **Challenging discriminatory practices:** Attorneys can combat discriminatory practices that create barriers to successful reintegration. Attorneys can challenge biases within the legal system to foster a more humanized and just process.

## **2. Legislative and Policy Advocacy**

Attorneys can actively push for laws and policies that align with international human rights standards like those outlined in the resolution and directly embody the supportive framework that makes the REACH court so effective. By advocating for systemic change, attorneys can scale the principles of REACH beyond individual cases. These efforts include:

- **Lobbying for policy change:** Attorneys can advocate for bills that directly reflect the REACH model's focus on reintegration and addressing systemic barriers, such as preventing discrimination against returning citizens in employment, housing, and education. By providing legal expertise and highlighting the success of models like REACH, attorneys can demonstrate how these policy changes will make communities safer and reduce recidivism.
- **Testifying for legislation:** Attorneys can utilize their legal knowledge to testify before legislative bodies, advocating for policies that prioritize reintegration, much like REACH prioritizes individualized support and community help. This might mean championing second-chance programs, mentorship initiatives, fair housing legislation, or expanded job training opportunities for returning citizens, directly drawing parallels to the

comprehensive support network inherent in the REACH model.

### 3. Filing Impact Litigation to Advance Human Rights in Reentry

In addition to policy work, attorneys can challenge the human rights violations within the criminal justice system through litigation.

Attorneys can represent clients harmed by policies that are inherently self-defeating and undermine successful reintegration. A prime example is the conflict between housing discrimination against individuals with felony convictions and community supervision requirements to maintain a verifiable address. Lawsuits can be brought to challenge policies or practices (by housing authorities, landlords, or even supervising agencies) that

create this untenable Catch-22. Litigation can aim to:

- **Invalidate discriminatory housing policies** that disproportionately harm returning citizens and contribute to technical violations.
  - **Force supervising agencies to evaluate policies:** Understand the root cause of technical violations and provide exceptions to the fixed address requirements when individuals face documented housing discrimination.
  - **Seek systemic injunctions:** Seek requirements for government agencies like the IDOC to coordinate and create pathways to stable housing for returning citizens as a necessary component of successful supervision and reentry.
- Attorneys can bring class action lawsuits to address widespread systemic barriers that hinder reentry for large groups of returning citizens. This could include challenging:
- **Discriminatory employment practices:** Businesses that broadly exclude individuals with criminal records hinder financial stability, a key factor in successful reentry.
  - **Systemic failures:** Provide adequate mental health and addiction treatment within prisons and community supervision programs. Unmet treatment needs often lead to violations and recidivism.
  - **Transportation:** A lack of accessible transportation services



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**"Such situations highlight a key policy gap: The legal system often imposes requirements that assume access to resources and opportunities that many returning citizens simply lack."**

in some areas creates systemic obstacles for returning citizens to comply with community supervision requirements and access essential resources.

#### **4. Increase Pro Bono and Community Work**

Attorneys can dedicate time to pro bono and community work, addressing the needs of marginalized communities and returning citizens:

- **Legal aid for reentry:** Attorneys can provide pro bono legal

services to help returning citizens expunge their records, restore their civil rights, or navigate legal barriers to housing and employment.

- **Educate the public and legal community:** Attorneys can raise public and legal awareness of human rights in the criminal justice system through educational programs, workshops, and seminars. These efforts should highlight returning citizens' reentry challenges and advocate for human rights

principles as the foundation for effective reintegration. Providing real-life examples can create a more empathetic and informed public and legal community.

#### **5. Partner with Community Organizations to Support Reentry**

Attorneys can increase their impact by partnering with community-based organizations that serve returning citizens. Organizations like *RecycleForce*, *Thomas Ridley's 1 Like Me*, *Trusted Mentors*, *PACE*, and *Indiana Reentry Corporation*



provide essential services like employment, mentorship and social support that are key to successful reentry.

By working with these organizations, attorneys can guide their clients to successful reintegration. For example, attorneys can forge relationships with these organizations so they can help clients navigate the gaps discussed above. This collaborative approach has a proven track record of success.

### CONCLUSION: MOVING TOWARD A HUMAN RIGHTS-CENTERED LEGAL PRACTICE

Incorporating human rights perspectives into criminal justice advocacy allows attorneys to act as catalysts for meaningful reentry reform. Through proactive legal action, policy support, and compassionate counsel, attorneys not only fulfill their ethical responsibilities but also contribute to creating a more just and equitable society. As the criminal justice system grapples with issues of fairness and rehabilitation, integrating human rights principles into legal practice remains a powerful tool for transforming the system and ensuring every individual can reintegrate with dignity and respect. ☯

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# KEEP AN EYE OUT FOR THE U.S. SUPREME COURT GROUP SWEARING-IN CEREMONY

*By ISBA Staff*



Each year, the ISBA arranges a group swearing-in ceremony before the U.S. Supreme Court for Hoosier attorneys. This full-day experience brings ISBA members together in the heart of Washington, D.C., where they can explore the city, be formally admitted to practice before the nation's highest court, and have the chance to watch an oral argument live before the bench.

In 2025, ISBA will offer two opportunities for members:

- Monday, November 10
- Wednesday, November 12

## REFLECTIONS FROM PAST ATTENDEES

### LAURA SCOTT

**FARMER SCOTT OZETE ROBINSON & SCHMITT LLP, 2024**

"I had thought about participating in the Supreme Court Admission Ceremony many times in the past, but the timing never worked out for me. I was too busy at work; I had family commitments; and it seemed like too much to try and do something that was, quite frankly, just for me. But when I saw that the opportunity for the Supreme Court Admission Ceremony was available in 2024, I decided that this time I was going to do it...

"Since we are only allowed one guest, I decided to share this experience with my high school age son. He was excited about the prospect of seeing, in person, a Supreme Court that he had only read about in Government and History classes. I was excited to share this once-in-a-lifetime experience with him. We enjoyed exploring the halls of the Supreme Court before the ceremony and meeting U.S. Chief Justice Roberts in person. For me, the swearing in ceremony

was exhilarating! I was face to face with each of the justices that I feel like I have come to know over the years of reading their opinions. As if that weren't enough, we then experienced a live oral argument and saw the justices in action. The interaction between the justices and the attorneys, the courtroom process, and the discussions were fascinating. I was enthralled by the entire experience!

"In the days that followed the ceremony, my son and I have talked a lot about what we saw during our time at the Supreme Court. It has been interesting to hear a young person's perspective on the highest court in the land and we have engaged in a lot of discussion about issues both big and small. I can't thank the ISBA enough for making the experience so memorable. The day was seamless, and I was able to focus on enjoying the experience."

**AMANDA OWENS BLACKKETTER**  
**BLACKKETTER LAW LLC, 2023**

"My father G. Douglass 'Doug' Owens passed away January 13, 2023. Dad practiced law in Pendleton for 50+ years until his health prevented him from doing so in his 80s. My oldest brother, Bryce Owens, is also an attorney in Pendleton, and they maintained an office together for decades. Both my dad and brother were admitted to practice in the U.S. Supreme Court many years ago. In fact, my dad made the oral motion to admit my brother before the Court.

"Being admitted to practice in the U.S. Supreme Court had always been something I intended to do, but life is busy, isn't it? Getting married after law school, establishing a practice, raising children...the list goes on.

"When I saw that the admission ceremony would be November 29, I knew it was time. You see, that is my dad's birthday. My husband and I traveled to Washington D.C. for the swearing-in ceremony. It was everything I hoped it would be, and I highly recommend it."

**J. GREGORY SHELLEY**  
**BOSE MCKINNEY & EVANS LLP, 2022**

"The last time I was in Washington D.C., I was 13 years old with my father attempting to impress upon me the importance of the monuments and institutions we were visiting. Who could have imagined the next time I was in our nation's capital, some 50 years later, I would be standing in the front row of the galley of the United States Supreme Court being sworn in before all nine justices? A day no lawyer expects or could ever forget...



"Treated as honored guests from the moment we arrived and faced the imposing statue of Chief Justice John Marshall (remember to rub his toe for good luck!), we waited in an elegant conference room before portraits of John Jay and others to be addressed by the Clerk of the Court as to the day's protocol and procedure.... One can only be impressed at the depth and breadth of required preparation for the honor of appearing in this forum. Every day there, is an important day in American history.

"My sincere thanks to the ISBA for making this a possibility, and I encourage all attorneys to take advantage of this opportunity at some point in their career."

**HOW TO APPLY**

More details about the 2025 ceremonies and application process will be announced soon. Each ceremony is limited to 12 participants, so be sure to visit [www.inbar.org/GroupAdmissions](http://www.inbar.org/GroupAdmissions) to learn more and complete the interest form. You'll be the first to know when registration opens (typically in July).

If you have any questions, please contact Julie Gott at [jgott@inbar.org](mailto:jgott@inbar.org). ☎



# ANDERSEN V. STABILITY AI: THE FUTURE IMPACT ON ARTIFICIAL INTELLIGENCE CASES

By Hannah Andrade



In August 2024, an order by Judge William H. Orrick of the Northern District of California granted in part and denied in part motions to dismiss the plaintiffs' first amended complaint.<sup>1</sup> This August 2024 order for *Andersen v. Stability AI* significantly changed disputes regarding artificial intelligence (AI) and how future cases may proceed.

On January 13, 2023, cartoonist Sarah Anderson and several other artists filed a suit against the generative-AI companies Stability AI (the creator of Stable Diffusion), Midjourney, DeviantArt, and Runway AI (which assisted in creating Stable Diffusion) for copyright infringement.<sup>2</sup> The plaintiffs claimed the defendants used their works to train AI without obtaining the artists' permission<sup>3</sup> and alleged that the defendants' AI tools created an infringing derivative work.<sup>4</sup> The defendants filed motions to dismiss on April 18, 2023.<sup>5</sup> The court granted the motions to dismiss except for the copyright infringement claim against Stability AI.<sup>6</sup> On February 8, 2024, the court denied the renewed motion to strike. The defendants filed motions to dismiss the plaintiffs' amended complaint, and the court granted those motions in part and denied them in part on August 12, 2024.<sup>7</sup>

## AN ARTIFICIAL INTELLIGENCE CASE AND ITS IMPACT

The order shifts how courts will analyze claims regarding copyright infringement, induced infringement, and DMCA claims for removal of copyright management information.<sup>8</sup> This case affects a myriad of issues and their potential paths at the intersection of copyright and artificial intelligence. The determinations made in this case will impact intellectual property and the arts, AI development, the public's access to art, and artists' livelihoods as well.

## THE COURT DECISIONS

With the August 2024 order came a decision allowing the case to continue forward with discovery.<sup>9</sup> Judge Orrick held that the claims for direct and induced copyright

infringement were sufficient to proceed.<sup>10</sup> The plaintiffs argued that induced copyright infringement exists based on the possibility that end users' operation of Stable Diffusion would result in creation of an infringing work.<sup>11</sup> According to the plaintiffs, the model facilitates that infringement, as the model was designed, at least to an extent, to ingest—then create derivative works based on—copyrighted works, and its operation invokes protected elements of those works to produce its outputs.<sup>12</sup> Furthermore, the plaintiffs claim that Runway helped train and develop Stable Diffusion, so the defendant knew the product used or involved the training images in its operation.<sup>13</sup> This, along with the claim that Runway induced others to download Stable Diffusion by distributing through their websites, was sufficient to allow the case to proceed.<sup>14</sup>

### THE CASE MOVES FORWARD

In this order, the court held that the direct infringement copyright claims are sufficiently pled as well.<sup>15</sup> Here, the plaintiffs alleged that Stable Diffusion is built on copyrighted works and that the product's operation elicits copies of protected elements of those works.<sup>16</sup> The plaintiffs further relied on a comment by the Stability CEO on the content and operation of the model to demonstrate the model's ability to "recreate" the works that were used for training.<sup>17</sup> The plaintiffs also relied on academic papers indicating the Stable Diffusion models can produce works identical to at least some training images.<sup>18</sup> The plaintiffs alleged that using names in prompts to the Runway products resulted in outputs mimicking portions of the plaintiffs' protected works, providing evidence that their works are being copied into Runway's product.<sup>19</sup> The court

found these allegations sufficient to allow the direct infringement claims to move forward.

### WHAT THE FUTURE HOLDS

The August 2024 order has a significant impact not just on the direction of this case, but on future AI cases, plaintiffs, artists, and copyright law as well. Here, as the plaintiffs focus their argument on AI tools potentially creating art in the style of an existing artist, they label these creations as infringing derivative works. Moving forward, they will need to demonstrate to the court how creating a new work of art in the style of an existing artist is in fact copyright infringement. We can already see how certain aspects of the holding relating to copyright law, infringement, and protections on artists' work are sufficient to move this case forward, and they may also enable similar, prospective cases to proceed. ☞

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*Hannah Andrade became a member of the Indiana Bar in January 2022. Hannah Andrade currently works as an Attorney Advisor for the Federal Communications Commission headquartered in Washington, D.C. and focuses on telecommunications and regulatory law. Hannah currently resides in Washington, D.C.*



### ENDNOTES

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By Joel Schumm



# FEBRUARY CASES ADDRESS RETROACTIVITY, JURY INSTRUCTIONS, SECOND AMENDMENT, AND MORE

During February a divided Indiana Supreme Court addressed the non-retroactive application of recent statutory amendments regarding the jurisdictional gap for minors who commit child molesting but are not prosecuted until adulthood. The Court of Appeals decided cases involving lesser included offenses, ex parte communication with jurors, double jeopardy, and the Second Amendment.

## INDIANA SUPREME COURT

### AMENDMENTS ADDRESSING JUVENILE JURISDICTIONAL GAP DO NOT APPLY RETROACTIVELY

Under a series of recent opinions, the state has been precluded from “prosecuting an individual who allegedly committed child molesting as a minor but was not waived into adult court before turning twenty-one.” *Brown v. State*, 252 N.E.3d 910, 911 (Ind. 2025). Specifically, this

jurisdictional gap prevented (1) the juvenile court from hearing the case because the individual was twenty-one or older, (2) the juvenile court from waiving the case to adult court because the juvenile court lost jurisdiction—and thus the ability to waive to adult court—when the individual turned twenty-one, and (3) the adult court from hearing the case directly because adult courts do not have jurisdiction over delinquent acts committed by minors.



*Id.* Statutory amendment enacted in 2023 closed the gap by allowing the state to “file charges directly in an adult court against an individual who is at least twenty-one years old for acts committed before turning eighteen if the juvenile court could have waived jurisdiction had the State brought a timely delinquency petition in juvenile court.” *Id.* at 914 (citing Pub. L. No. 115-2023).

The Indiana Supreme Court held in *Brown* that the amendments do not apply retroactively to pending cases. The majority concluded “that even if the Amendments are remedial, there are no ‘strong and compelling reasons’ to apply them retroactively because the General Assembly did not intend retroactive application.” *Id.* at 913 (quoting *N.G. v. State*, 148 N.E.3d 971, 974 (Ind. 2020)).

First, remedial statutes are enacted to correct “defects, mistakes, or omissions.” *Id.* at 915. The majority questioned whether the amendments were remedial because, in addition to closing the jurisdictional gap, they included new ameliorative provisions. For example, trial courts must find by “clear and convincing evidence” that the defendant is likely to repeat an act of child molesting before being designated a “sex offender” and defendants were provided the right to a new sentencing mitigator. *Id.*

Second, based on its reading of the applicable statutory language, the majority concluded that the General Assembly did not intend to apply the amendments retroactively. *Id.* at 916. Notably, unlike other amendments that included language extending their reach to “proceedings pending” at the time, “the General Assembly did not provide a clear statement” specifying that the

2023 amendments should apply retroactively. *Id.* at 916. Moreover, Indiana courts interpret statutes to avoid constitutional issues. *Id.* By reclassifying certain delinquent acts as criminal offenses, the amendments remove the possibility of a more lenient consequence, potentially resulting in an ex post facto violation. *Id.* at 917.

Justice Slaughter wrote a concurring opinion, reiterating views expressed in his *N.G.* dissent: the court’s retroactivity analysis should “rely on text alone and require an affirmative statement of retroactivity to overcome the judicial presumption that legislative silence means prospective-only application.” *Id.* at 918. As he explained, “[a]

plain-statement requirement should be our default rule. It is easy to understand and apply. And it conveys in no uncertain terms how the legislature can overcome the judicial presumption that an enactment applies only prospectively.” *Id.*

In a separate opinion, Justice Molter and Justice Massa fully joined the majority’s “well-reasoned opinion [that] faithfully adheres to our precedents.” *Id.* However, commending “Justice Slaughter’s proposal for a clearer judicial presumption that legislation operates only prospectively unless the legislature explicitly directs us otherwise,” they concluded that they were “open to adopting his proposed rule in a future case.” *Id.*

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## INDIANA COURT OF APPEALS TRIAL COURT ERRED IN REFUSING TO GIVE RESIDENTIAL ENTRY INSTRUCTION

In *Collins v. State*, 252 N.E.3d 971, 976 (Ind. Ct. App. 2025), the defendant returned to a man's apartment demanding to see a woman who had been there at an earlier gathering. The woman was not there, and the defendant grabbed a chain from the occupant's neck, brandished a knife, demanded \$50, and then demanded to use the occupant's phone. The defendant was charged with burglary and other offenses.

A person commits burglary when the person "breaks and enters the building or structure of another person, with intent to commit a felony or theft in it[.]" Ind. Code § 35-43-2-1. A person commits residential entry when the person "knowingly or intentionally breaks and enters the dwelling of another person[.]" I.C. § 35-43-2-1.5. Decisional law has long established

that "residential entry is a lesser-included offense of residential burglary, with the only difference in this scenario being whether the defendant intended to commit a felony or theft when entering the residence." *Collins*, 252 N.E.3d at 976.

The defendant tendered a residential entry instruction, which was refused. A trial court must give a lesser-included offense instruction if there is a serious evidentiary dispute such that a jury could reasonably find the defendant committed the lesser offense but not the greater. *Id.* at 977. In refusing the defendant's tendered residential entry instruction, the trial court found no substantial evidentiary dispute based on its misapprehension that the required intent "can form after you enter the premises." *Id.* at 978.

However, "[a] criminal conviction for burglary requires proof beyond a reasonable doubt of a specific criminal intent which coincides in time with the acts constituting

the breaking and entering[.]" *Id.* at 977. Put another way, "a person who breaks and enters without any intent to commit an underlying [crime] is not guilty of burglary." *Id.* The defendant entered with the intent to locate the woman and formed the criminal intent to forcibly rob the occupant of cash and steal his phone only after failing to find her. *Id.*

Based on the instructional error, the burglary conviction was reversed and remanded for a new trial.

## EX PARTE COMMUNICATION WITH JURORS

In *Minor v. State*, 252 N.E.3d 979 (Ind. Ct. App. 2025), the Court of Appeals rejected both common law and constitutional challenges to two separate ex parte communications during a jury trial. First, the bailiff told jurors, "no," when they asked "if they could have" the bodycam recording; second, the trial court answered a written question without the defendant or counsel present. *Id.* at 984.

Although it found no reversible error, the opinion noted that this was an area the Indiana “Supreme Court has become more involved in by regulating trial courts’ involvement with juries.” *Id.* at 988. The bailiff and trial court should have done things differently, but only the supreme court could “overturn longstanding precedent” under which the panel held reversal was not warranted. *Id.*

### RETRIAL BARRED BY DOUBLE JEOPARDY

In *Eichelburger v. State*, 251 N.E.3d 1106 (Ind. Ct. App. 2025), the Court of Appeals found the trial court abused its discretion when it granted the state’s request for a mistrial during the first jury trial such that the conviction obtained after a second trial violated double jeopardy. Before the first trial, the trial court granted a motion in limine preventing defense counsel from referencing “the facts contained within the statements made by [Eichelburger] to investigators from [IMPD]” before the state introduced the statements; the evidence would be inadmissible hearsay if offered by the defendant. *Id.* at 1114. At trial, defense counsel asked a detective if he had notified the victim “about [Eichelburger’s] interrogation.” *Id.* The state moved for a mistrial, which the trial court granted, finding that it was “entirely improper for Defense [C]ounsel to refer to the fact that [Eichelburger] gave a statement [to the detective] prior to the State introducing it.” *Id.*

The Court of Appeals disagreed. Defense counsel’s question did not introduce into evidence any of Eichelburger’s statements to the detective that would have amounted to hearsay. *Id.* at 1115. The motion in limine did not prohibit defense counsel from referencing that the detective had interviewed

the defendant; it only prohibited introducing into evidence the actual statements that he made to the detective, which defense counsel did not do. Moreover, the jury already knew the defendant had made a statement to the detective based on earlier testimony. *Id.*

Because declaring a mistrial at the first trial was improper, the conviction was reversed because the second trial violated the defendant’s right against double jeopardy under the Fifth Amendment to the United States Constitution and Indiana Code Section 35-41-4-3(a)(2)(iv). *Id.* at 1115-16.

### NO SECOND AMENDMENT PROTECTION FOR MACHINE- GUN CONVERSION DEVICE

In *McGee v. State*, 252 N.E.3d 467 (Ind. Ct. App. 2025), the Court of

Appeals rejected a defendant’s Second Amendment challenge to his conviction for possession of a machine gun based on possessing a Glock 22 handgun with a machine-gun conversion device attached to it. The first step of *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), considers whether the Second Amendment’s plain text covers an individual’s conduct. The Court of Appeals agreed with “the overwhelming number of federal district courts that have determined under step one of *Bruen* that the Second Amendment does not protect machine guns because they are dangerous and unusual.” *McGee*, 252 N.E.2d at 468. <sup>(4)</sup>

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By Greg Anderson



# REVISITING THE ATTORNEY SURROGATE RULE: A PROPOSAL

**Your friend asks you to be an attorney surrogate if an unfortunate and unexpected event happens. For example, your friend dies, disappears, or becomes incapacitated.<sup>1</sup> Your first reaction to your friend's request: dread. Don't panic! Designating an attorney surrogate is merely a contingency plan to protect your friend's clients.**

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## PURPOSE OF ATTORNEY SURROGATE RULE

Seventeen years ago, the Indiana Supreme Court adopted the Attorney Surrogate Rule to help with this type of contingency plan.<sup>2</sup> Donald Lundberg was the executive director of the Indiana Supreme Court Disciplinary Commission at the time that the rule was enacted and became effective. The purpose of the rule is to provide a mechanism to protect clients when their attorney dies, disappears, becomes incapacitated, or is suspended or disbarred. In 2009, Lundberg described the rule's purpose:

Lawyers have a collective responsibility to [ensure] that clients are not harmed when misfortune befalls one of our colleagues. This [Attorney Surrogate Rule] provides a structure for fellow bar members to step forward and help each other out in a time of great need. When another lawyer whom you trust asks if you would be willing to be designated as a surrogate, give it some thought. I hope you'll say yes, just as you undoubtedly hope another lawyer will agree to help out when you make a similar request.<sup>3</sup>

Lundberg suggested that the legal profession has a collective responsibility to protect all clients of any lawyer when a lawyer suffers incapacity due to death, mental or physical disability, or removal from the practice of law.

This philosophy is aligned with the fiduciary duties of attorney-client relationships. In 2010, Ted Waggoner (chair of the ISBA Special Committee on Attorney Surrogates Rule) described this “collective responsibility” as follows:

In the grand tradition of the law, many lawyers are again being invited to supplant their own interest for the interest of their clients. Ever since the lawyer-client relationship was first considered a fiduciary relationship, we have been expected to place our client's interests ahead of our own in many areas. The Indiana legal profession has again been strongly encouraged to do that, in a way that has direct impact on Indiana's solo attorneys. The Attorney Surrogate Rule is designed to protect the clients of sole practitioners.<sup>4</sup>

As suggested by Waggoner and Lundberg, the Attorney Surrogate Rule is a “collective responsibility” placed on the members of the Indiana legal profession to protect clients of any attorney who dies or becomes incapacitated.

Comment [5] to Ind. Professional Conduct Rule 1.3 supports the view that an attorney has a fiduciary duty to protect clients from any misfortune that the attorney might suffer, such as death, incapacity, or discipline. Comment [5] states:

To prevent neglect of client matters in the event of a sole practitioner's death or

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disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Ind. Admission and Discipline Rule 23, Section 27 (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).<sup>5</sup>

#### INDIANA AS THE GOLD STANDARD

The Senior Division of the American Bar Association suggested that Indiana's Attorney Surrogate Rule might be the gold standard for succession planning for lawyers in the United States.<sup>6</sup> The Indiana Attorney Surrogate Rule provides protection to clients in various ways:

- the attorney surrogate is appointed and supervised by a local court;
- the attorney surrogate has the power to take possession of the incapacitated lawyer's files;
- the attorney surrogate is permitted to ask for limited relief on behalf of the lawyer's clients;

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- the attorney surrogate is given the power to take possession of the trust accounts of the incapacitated lawyer and take appropriate action;
- the attorney surrogate is given immunity from civil suit absent intentional wrongdoing by the attorney surrogate.<sup>7</sup>

All activities of an attorney surrogate are supervised by the local court that appoints the attorney surrogate. Courts supervising attorney surrogates are given powers that include making appropriate orders regarding how to distribute unclaimed client files and destruction of such files.<sup>8</sup> Further, all time limitations related to the incapacitated lawyer's clients are automatically extended 120 days from the date of the filing of the surrogacy petition.<sup>9</sup> All these features of Indiana's Attorney Surrogate Rule are what make it the gold standard. But are there flaws?

#### **FAILURE TO DESIGNATE ATTORNEY SUGGESTION**

You become aware that a colleague is incapacitated or has died. You know that this colleague did not designate an attorney surrogate. Now what? Some attorneys and judges call the Disciplinary Commission and ask, "What do I need to do?" The staff directs the caller to the Attorney Surrogate Rule and suggests that the local bar association might be able to help. This answer is not satisfactory in most instances.

The Attorney Surrogate Rule provides that when a lawyer has failed to designate an attorney surrogate, then the lawyer is "deemed to designate a senior judge or other suitable member of the bar of this State in good standing."<sup>10</sup> In short, lawyers are not required to designate an attorney surrogate under the current Attorney Surrogate Rule.

In a recent Attorney Surrogate case, the surrogacy court resolved the issue of failure to designate an attorney surrogate by appointing a local bar association. An immigration lawyer abandoned his practice and was suspended from the practice of law indefinitely. Several months passed while the Disciplinary Commission's staff and others looked for a way to protect the incapacitated lawyer's clients. After an extensive search, the local chapter of the American Immigration Lawyers Association (AILA) stepped up to serve as the surrogate. Under the direction of the chair of the local chapter of AILA, a committee inventoried files and documents and distributed them to the appropriate clients.<sup>11</sup>

#### **PROPOSAL TO AMEND ATTORNEY SUGGESTION RULE**

When lawyers fail to designate an attorney surrogate under the Attorney Surrogate Rule, it leaves



**"Requiring the designation of attorney surrogates would improve the Indiana bar's 'collective responsibility' to ensure the clients of incapacitated lawyers are protected."**

others to scramble to protect that lawyer's clients when the lawyer becomes incapacitated or dies. Indiana's Attorney Surrogate Rule can be improved by making it mandatory for lawyers to designate an attorney surrogate.

The Florida Bar already requires its members to "designate another member of The Florida Bar who has agreed to serve as inventory lawyer under this rule except that no designation is required with respect to any portion of the member's practice as an employee of a governmental entity."<sup>12</sup> The purpose of the Florida rule is to allow agents of The Florida Bar to have a point of first contact when it becomes necessary to appoint "an inventory lawyer."<sup>13</sup> The designated lawyers in Florida are not mandated to act as "an inventory lawyer," but the designated lawyer gives the authorities a person to contact when a lawyer becomes incapacitated.

Indiana should follow Florida by adopting a new provision to Indiana's Attorney Surrogate Rule requiring all lawyers to designate an attorney surrogate. If designation of an attorney surrogate becomes a requirement, Indiana authorities would have someone to contact when a lawyer dies or becomes incapacitated. This contact would be a member of the Indiana bar near the incapacitated lawyer's law practice. Requiring the

designation of attorney surrogates would improve the Indiana bar's "collective responsibility" to ensure the clients of incapacitated lawyers are protected. ☞

*Greg Anderson is the deputy director of administration for the Office of Judicial and Attorney Regulation.*

#### ENDNOTES

1. Ind. Admission and Discipline Rule 23, § 27 ("Attorney Surrogate Rule"). Admis. Disc. R. 23(27)(c)(1) lists the reasons to request an attorney surrogate as a lawyer has died, disappeared, become disabled, or been disbarred or suspended. In this article, the language "become disabled" is updated to "become incapacitated."
2. Ind. Admission and Discipline Rule 23, § 27 (effective January 1, 2008).
3. Rebecca A. Lewis, *Attorney Surrogates*, Dec-Wyo.Law. 12 (Dec. 2009) (quoting Donald Lundberg, former executive director of the Indiana Supreme Court Disciplinary Commission). Lundberg became the executive director of the Indiana Supreme Court Disciplinary Commission in December 1991 and left this position on January 1, 2010.
4. Ted A. Waggoner, *Best Practices Manual – A Means to Client Protection Attorney Surrogate Rule*, 54 Res Gestae 49 (November 2010).
5. Ind. Professional Conduct Rule 1.3, Comment [5].
6. Raphael S. Nemes, *Surrogate Attorneys: Designating a Successor if the Unexpected Happens*, Voice of Experience Archives (February 28, 2017) [https://www.americanbar.org/groups/senior\\_lawyers/resources/voice-of-experience/2010-2022/surrogate-attorneys-designating-successor-if-unexpected-happens](https://www.americanbar.org/groups/senior_lawyers/resources/voice-of-experience/2010-2022/surrogate-attorneys-designating-successor-if-unexpected-happens).
7. Ind. Admis. Disc. R. 23(27)(c).
8. Ind. Admis. Disc. R. 23(27)(d).
9. Ind. Admis. Disc. R. 23(27)(e).
10. Ind. Admis. Disc. R. 23(27)(b)(3).
11. *Matter of Moreno*, Marion Superior Court, Cause Number 49D06-2301-MI-004311. The incapacitated attorney was disbarred for abandoning his immigration practice while the surrogacy case was pending in Marion Superior Court. See *Matter of Moreno*, 222 N.E.3d 948 (Ind. 2023)(disbarring attorney for abandoning immigration practice).
12. Florida State Bar Rule 1-3.8(d).
13. *Id.*

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# FEBRUARY CASES ADDRESS PROPERTY PROTECTIONS, BUILDING PERMIT

In February 2025, the Indiana Supreme Court issued three civil opinions and granted transfer in one civil case.

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## PREMISES LIABILITY AND PLACES OF WORSHIP: SUPREME COURT CLARIFIES SCOPE OF CHURCH PROPERTY PROTECTIONS

*Calvary Temple Church of Evansville, Inc. v. Kirsch*, 251 N.E.3d 1056 (Ind. 2025) — A church trustee oversaw a project to build a storage barn for a new church van on a portion of the church's five-acre property. During construction, the trustee fell from an unstable 10-foot ladder and suffered a severe arm injury. The trustee brought a negligence action against the church, alleging failure to provide safe equipment, supervision, and training. The church moved for summary judgment, citing Indiana Code § 34-31-7-2, which defines the scope of duties a “nonprofit religious organization” owes to persons entering premises the organization owns, operates, or controls and “used for primarily worship services.” Specifically, that duty requires the organization only to warn of known hidden dangers and refrain from intentional harm.

In opposition to a motion for summary judgment, the trustee argued that the statute did not apply because he was injured on a portion of the church's premises not "used primarily for worship services." The trial court agreed, denying the motion and the Court of Appeals affirmed, finding the statute ambiguous: the phrase "premises...used primarily for worship services" could reasonably mean either the entire grounds of the property or only the main worship building. The Court of Appeals also found the statute in derogation of the common law, and applying a strict construction in light of that, held that the statute applied only to portions of the premises used primarily for worship services.

On transfer, the Supreme Court reversed the trial court and granted summary judgment for the church, holding that "premises" has an expansive meaning that includes the entire parcel of land. As "premises" was undefined in the statutory section, the court began its interpretation by consulting plain language dictionaries (e.g., Merriam-Webster), which showed that "premises" refers broadly to land and buildings on the land. Given that plain language definition, the court disagreed that the statute was ambiguous.

#### **BORDERLINE TRUST ISSUES? SUPREME COURT RESOLVES CONFLICT ON SUBJECT-MATTER JURISDICTION IN MULTISTATE TRUSTS**

*Tingley v. First Financial Bank, Trustee of Land Trust No. 428, 2025 WL 602588 (Ind. Feb. 25, 2025)* — In 2002, nine joint owners of six parcels of land in Illinois created a trust, naming themselves as beneficiaries and an Illinois bank as trustee. An Indiana bank (headquartered in Terre Haute) later acquired the Illinois bank (and its trust accounts) and continued administering the trust in Illinois. Twenty years after the trust's creation, one of the successor beneficiaries sought to enforce a trust provision requiring the public sale of trust property after 20 years, suing the trustee Indiana bank in the Vigo Superior Court. The trustee sought to dismiss the action for lack of subject-matter jurisdiction and filed a separate action in Illinois. The trial court granted the motion to dismiss. The Court of Appeals reversed but noted conflicting appellate precedent on whether an Indiana trial court has subject-matter jurisdiction over multistate trusts.

The Indiana Supreme Court granted transfer to resolve the conflict and reversed the trial court's dismissal. The court explained that: (a) subject-matter jurisdiction asks whether the action falls within the general



scope of authority conferred upon by the court by the constitution or by statute; (b) that by statute superior courts have original and concurrent jurisdiction in all civil cases, including declaratory judgment actions. Although Indiana trust code sets forth the preferred venue, the court clarified that venue and jurisdiction are distinct, and a venue error does not deprive the court of jurisdiction. The court therefore held that the Vigo Superior Court properly had subject-matter jurisdiction but also noted that (jurisdiction aside) doctrines of comity and *forum non conveniens* would permit discretionary dismissal.

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### **NUISANCE OR NECESSARY? PRELIMINARY INJUNCTION PROVES PREMATURE—BUILDING PERMIT POTENTIALLY PROTECTED BY PROVISIONS OF FEDERAL LAW**

*Willow Haven on 106th St., LLC v. Nagireddy*, 2025 WL 546011 (Ind. Feb. 19, 2025)—A developer sought to build a 10-bedroom residential care home for individuals with Alzheimer’s and dementia in a Carmel neighborhood zoned for single-family residences under the city’s unified development ordinance (UDO). At the request of the developer, the city’s director of community services issued a pre-construction building permit. Shortly after construction began, the next-door neighbors contacted the city, claiming that the developer needed a variance from the city’s Board of Zoning Appeals to operate in a single-family zone and asked the city to issue a stop-work order. The city refused, and the neighbors sought a preliminary injunction halting construction, alleging that the developer’s use of the land violates the UDO and thus constitutes a public nuisance. The trial court granted the preliminary injunction, and the Court of Appeals affirmed, both finding that the development did not qualify as a “group home” under the UDO.

The Indiana Supreme Court granted transfer and vacated the injunction, reasoning that the plaintiff-

neighbors failed to establish a likelihood of success on the merits of their nuisance claim. The court explained that state or federal laws may override the city’s UDO and protect the developer’s land use, but the parties did not fully litigate that aspect below and the trial court did not adjudicate that question. With that aspect unresolved, the court concluded that the entry of a preliminary injunction was therefore premature and an abuse of discretion.

### **TRANSFER GRANTED**

*Baldwin v. Standard Fire Insurance Company*, 238 N.E.3d 655 (Ind. Ct. App. 2024), *reh’g denied* (Aug. 16, 2024) — Buckle up. This bad-faith battle involves three intertwined cases and an insurer’s questionable settlement strategy. As an initial matter, an insured driver was severely injured in an automobile collision with another insured motorist and brought a negligence action. The defendant-motorist’s insurer provided bodily injury coverage limits of \$50,000 per person and \$100,000 per accident. The plaintiff offered to settle for the per-person policy limit, but the insurer let the time-limited offer lapse. Shortly after the offer, the plaintiff-driver sued the defendant-motorist’s passengers, alleging that the passengers were also liable in negligence based on their knowledge of alcohol and

drug-related paraphernalia later discovered inside their vehicle. Aside from these two separate actions, the defendant's insurer filed a separate interpleader action against the driver, the motorist, and the passengers. The insurer then deposited \$100,000 with the trial court clerk and sought a declaration that it had performed all its obligations under the policy. Stemming from the other two actions, the plaintiff-driver had reached separate agreements with the defendant-motorist and one of the passengers, wherein he was assigned bad-faith claims against the insurer. He then filed amended counterclaims against the insurer in the interpleader action, alleging that the insurer breached various duties and acted in bad faith with respect to the defendant-motorist and the one passenger. On cross-motions for summary judgment in that interpleader action, the trial court sided with the insurer.

On appeal, the Court of Appeals affirmed in part, concluding that the plaintiff-driver could not hold the insurer vicariously liable for alleged malpractice by insurer-appointed counsel. However, the court also reversed in part, finding genuine issues of material fact

as to whether the insurer breached its duty of good faith in rejecting the \$50,000 settlement offer. The Indiana Supreme Court granted transfer on February 6, 2025. 2025 WL 489655. 

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