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**EXECUTIVE ORDERS  
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VOL. 64 NO. 10

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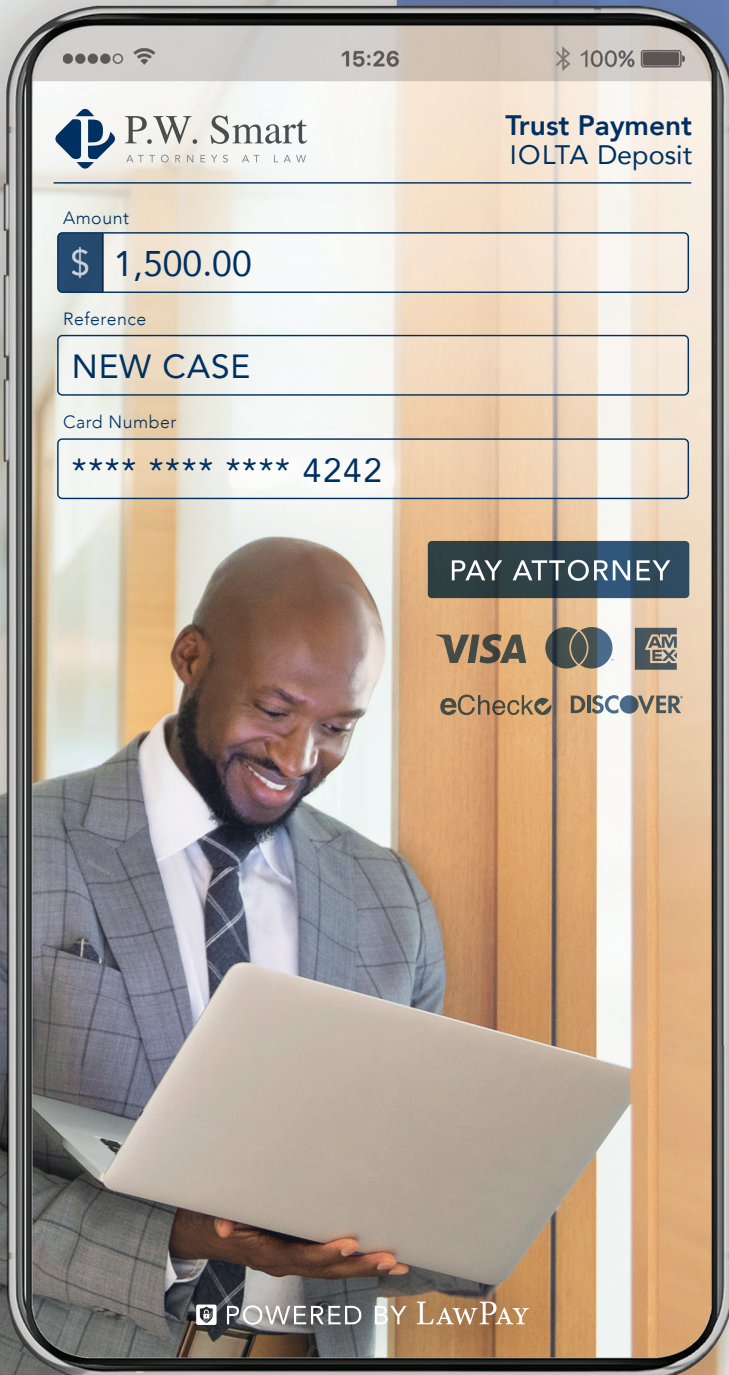
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## COVER STORY



### 10 EXECUTIVE ORDERS RELATED TO DACA

By Kris Sakelaris

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## President's Perspective

# 5 BOOKS EVERY LAWYER SHOULD READ

By Michael E. Tolbert

### PRESIDENT'S PERSPECTIVE

**A**t an early age, my parents instilled in me the love of reading. Initially, it was not always enjoyable. I can recall the mandatory Bible studies in the summertime that required the completion of daily reading assignments. Over time, I grew to love reading. It made me realize there were opportunities that existed beyond the limitations in my mind or neighborhood. Reading provided me the chance to receive advice or guidance from influential people without ever leaving Gary, Indiana. It also inspired me to become a lawyer.

Despite the many benefits that come from the exploration of a good book, many lawyers limit their reading to only statutes or codes. This is like going to the world's best supermarket only to visit one aisle. As lawyers, we must shop for knowledge the same way we look for good food. Variety is the spice of life! An expanded reading list, outside of statutes or codes,



is the gateway to an enhanced practice and provides lawyers much-needed perspective for an ever-changing world. Reading can serve as a road map for those that desire to change the world. Here are five books every lawyer should read at least once in their lifetime:

#### 1. "CONSCIOUS CAPITALISM"

When my wife and I decided to open a faith-based law firm in Gary, Indiana, we were inspired by John Mackey's book, "Conscious Capitalism." Mackey did not have a college degree before he co-founded Whole Foods, a multinational organization with outlets in major markets across the United States, Canada, and the United Kingdom. The book

"Conscious Capitalism" tracks Mackey's life and business philosophy.

Mackey's business principles are guided by the concept of "conscious capitalism." The term charges businesses with the

obligation to operate ethically in pursuit of profit. This means that businesses should consider positive interactions with all stakeholders. The book places a strong focus on being aware of employee needs, the community, humanity, and the environment—not just profits. This is a great read for lawyers who desire to bring purpose to their practice.

## 2. “OTHELLO”

No lawyer’s reading list would be complete without a Shakespeare tragedy. My favorite Shakespeare play is “Othello.” There are so many lessons that lawyers can take from “Othello.” Othello, a Moorish general in the Venetian army, gained success and prestige. Everything in Othello’s life appeared to be perfect. He married the beautiful Desdemona and had great military

standing. However, Iago, a jealous subordinate Othello thought was a friend, tricked him into thinking Desdemona was unfaithful. Iago was jealous of Othello and mad because he promoted another officer, Cassio, above him. Iago wove a web of deception that led Othello to accuse Desdemona of being unfaithful with Cassio. Othello, convinced by Iago of his wife’s unfaithfulness, plotted to kill Desdemona and Cassio. The tragic story ends with Othello smothering his wife to death

and committing suicide once he discovered Iago had deceived him.

This is a great story for lawyers because it reveals how one jealous person can ruin so many lives. By nature, lawyers are competitive. This competitiveness can cross the line into jealousy. Sometimes people do not present themselves clearly as enemies. Most of the time, antagonists present themselves as Iago did: a friend or trusted colleague. Pay attention and do not overreact to information given to you by a person that may have an ulterior motive. Heed the tale of Othello the Moor.

## 3. “THINK AND GROW RICH”

The book, “Think and Grow Rich,” was written by Napoleon Hill. The book has inspired many people to live a more productive, prosperous life. The book has sold more than 15 million copies since being published in 1937. I have read this book at least 10 times and it is one of my favorite reads. Each time I read it, I learn something new.

“Think and Grow Rich” is based on the study of successful people who have generated massive fortunes. The primary focus of the book deals with changing the way we think about success. Hill believes that success and wealth can be obtained by anyone who has a burning desire and applied faith. The chapter that deals with the subconscious mind is powerful and could be a book by itself. Hill believes success is indiscriminate. It does not care whether you have formal education. It does not care whether you are black or white. The success stories outlined in the book involve people without education or who were faced with many challenges.

**“The success stories outlined in the book involve people without education or who were faced with many challenges.”**

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This is a great book for lawyers because it tears down the myth of success. Success in the legal profession or in any vocation can be linked to desire and applied faith, not social status.

#### 4. "PAUL ROBESON: HERE I STAND"

Paul Robeson is an American icon. He was an artist, famous actor, and political activist. Robeson, born in 1898, was a key figure in the Civil Rights Movement. Robeson had every gift imaginable. In 1915, he won an academic scholarship to Rutgers College, where he was twice named a consensus All-American in football. Robeson was also the class valedictorian and received a degree from Columbia Law School while playing in the National Football League (NFL). Between 1925 and 1961, Robeson recorded and released some 276 distinct songs, many of which were recorded several times.

Although Robeson was a powerful force in the fight for civil rights, "Hear I Stand" is his only book. It chronicled the many sacrifices Robeson made to his career in the fight to secure civil rights for African Americans. In the book, Robeson discusses his 1934 trip to the Soviet Union. The book examines Robeson's opinions about communism and colonialism. His public stance on these topics led to Robeson's passport being revoked in 1950. His criticism of the United States government and its foreign policies caused him to be investigated by the FBI and blacklisted during the McCarthy era. During that time and in the prime of his career, Robeson was unable to travel and his ability to perform was severely hindered.

"Hear I Stand" is a great read for lawyers because we will all at some


point in our careers take a position, whether it be for a client or in a case, that may draw harsh public criticism. Robeson's book shows us how to handle the setbacks and attacks that come with doing the right thing.

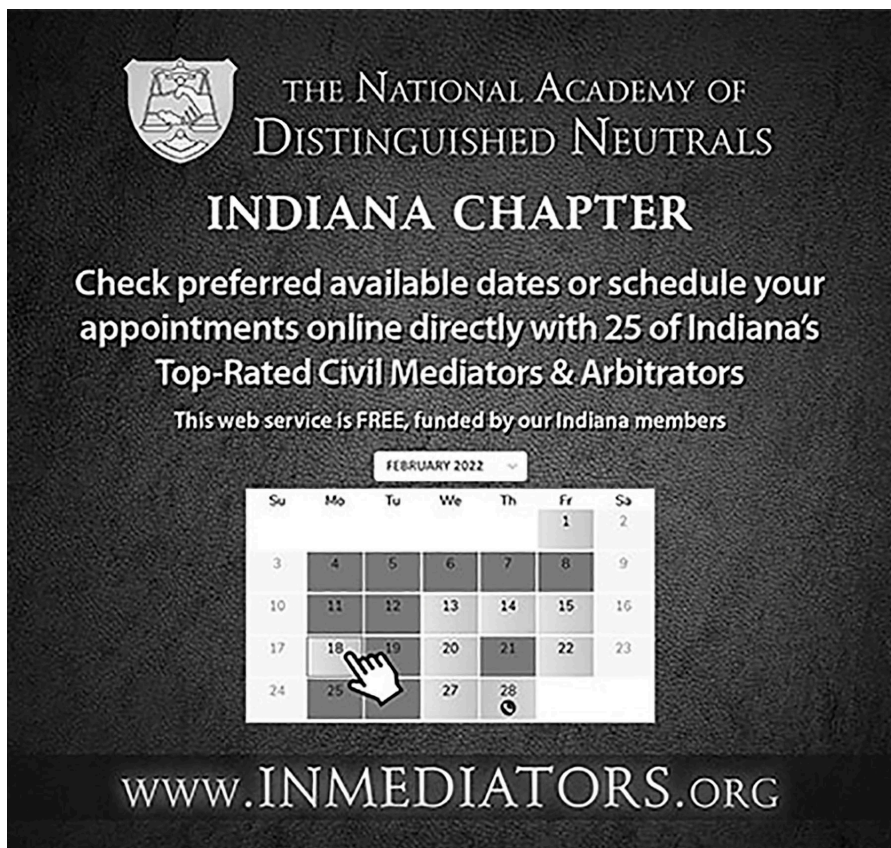
#### 5. "THE BOOK OF FIVE RINGS"


"The Book of Five Rings" is a martial arts book by Japanese swordsman Miyamoto Musashi. The book was written sometime around 1643 and has been used by businesspeople all over the world because of its broader application to life. Musashi wrote the book at the very end of his life after fighting in roughly 60 individual matches and three major battles on the field.

From these matches, Musashi identifies five phases of battle in

each of the five books: 1) The Earth; 2) The Water; 3) The Fire; 4) The Wind; and 5) The Emptiness. Each phase can be applied to key aspects of our lives. "The Book of Five Rings" focuses on conflict resolution through spirit, awareness, and self-discipline. The book is a worthy read for lawyers who desire helpful tools for handling conflict and stress that may come along with the practice.

In sum, this article is not intended to provide an exhaustive reading list for lawyers. There are many other books that I am certain would make great reads. The books referenced here are just a few of my favorites that I hope will help lawyers in their practice. President Harry Truman once said, "Not all readers are leaders, but all leaders are readers." Pick up a book and change the world. 



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# EXECUTIVE ORDERS RELATED TO DACA





## FEATURE

***By Kris Sakelaris***

The last year has been challenging for so many Americans as the pandemic raged across the country. Whether it was the uncertainty of the health of yourself and your family, becoming the “teacher” for your children as they learned virtually, or just generally worrying about surviving an unknown job market, the stress certainly took its toll. But now I want you to imagine a different kind of stress. Imagine waking up each morning wondering if this will be the day you are picked up and forced to leave the only home you have ever known and taken to a country you do not remember living in -- a place where you do not speak the language. You have heard about DACA (Deferred Action of Childhood Arrivals) but how do you know if you qualify and how will you ever maneuver yourself through the process? You might feel hopeless. The good news is if you live in Hammond, Indiana, you may now qualify for free legal services through the Hammond Legal Aid Clinic to help you with an immigration matter.

The Hammond Legal Aid Clinic was established in 2004 under Mayor Thomas McDermott Jr. to assist Hammond residents with their civil legal issues if they meet the residency and income guidelines. At its inception, the clinic was the first of its kind in the nation in that it functioned as an actual city department that was housed in Hammond City Hall. After four years, the clinic, with Mayor McDermott's support, became an independent 501(c)(3). Serving as the executive director since the opening has been the most rewarding experience of my almost 30-year legal career. After helping over 5,000 Hammond residents over the past 16 years, I am proud and excited the clinic is helping with immigration cases.

The clinic has partnered with attorney Alfredo Estrada of Burke Costanza & Carberry LLP to offer this assistance.

In 2019 Mayor McDermott worked with Estrada to create a DACA Resolution for the City of Hammond, which was voted on and unanimously approved by the Hammond City Council. "According to the 2010 census, approximately 34% of Hammond residents are of Hispanic or Latino origin," Mayor McDermott said. "One of our city's real strengths is its diversity. I knew that many of these Hammond residents would qualify for legal aid and I am very excited that I could bring the clinic and attorney Estrada together to offer these services."

The clinic began offering services for immigration cases in September 2020. Estrada meets with clients at the clinic twice a month. All the legal services are free, but the clients are required to pay for any United States Citizenship and Immigration Services application fees. Currently the clinic is offering immigration assistance with the following type of matters:

**I-90 Application to Replace Permanent Resident Card**

This form is used to replace or renew a green card

**I-130 Petition for Alien Relative**

This form is used if you are a U.S. citizen or lawful, permanent resident and you need to establish your relationship to an eligible relative who wishes to come to or remain in the United States permanently and get a Permanent Resident Card (also called a green card)

**I-360 Petition for Amerasian, Widow(er), or Special Immigrant (VAWA)**

This form is used for self-petitioning parent or child of an abusive U.S. citizen or lawful permanent resident or self-petitioning parent of an abusive U.S. citizen

**I-485 Application to Register Permanent Residence of Adjust Status**

This form is used to apply for lawful permanent resident status if you are in the United States

**Continued on page 33...**

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A child with large, white, feathered wings is flying through a sky filled with many smaller birds. The sky is a mix of blue, purple, and orange, suggesting a sunset or sunrise. The child is wearing a red jacket and dark pants. The overall scene is dreamlike and hopeful.

**“One of our city’s real strengths is its diversity. I knew that many of these Hammond residents would qualify for legal aid and I am very excited that I could bring the clinic and attorney Estrada together to offer these services.”**

By Shontrai D. Irving



# LEAVING A TRAIL

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**T**he renowned poet Ralph Waldo Emerson once wrote: “Do not go where the path may lead, go instead where there is no path and **leave a trail.**”

The Lake County Bar Association (LCBA) in Northwest Indiana has taken this quote to heart and has made a concerted effort and commitment to increase our outreach in the local community and have created a committee to take on this task and initiative first-hand.

Before expanding on the upcoming events by the LCBA’s Outreach Committee, I think it may be helpful to share some demographics about the county and bar. Lake County contains a total land area of 501 square miles with a population of roughly 485,000 people, including

a significant minority population. The county has 11 townships, and the largest cities are Gary and Hammond. The northern portion of the county contains approximately 80 percent of the population. The rest of the population lives in small- and medium-sized cities and towns. Lake County ranks second in total population out of the 92 counties in Indiana. The median household income is \$56,128 and the percentage of persons living in poverty is about 14.5%. The county has two main lakes, and has several environmentally sensitive natural areas including wetlands, dune prairies, and oak savannas.

The LCBA is an association with over 1,000 attorneys and judges and our mission is to cultivate the science of jurisprudence; promote reforms in

the law; facilitate the administration of justice; elevate the standard of integrity, honor, and courtesy in the legal profession; discourage and prohibit the illegal and unethical practice of law; cherish the spirit of congeniality among the members of the legal profession; and to foster and preserve a relationship of trust and respect between lawyers and the greater community.

When you look at the county demographics in more detail, it should come as no surprise that in Lake County there is a community of haves and have-nots. It has become a priority for those of us in Lake County who “have” to increase our deeds and efforts and gear them toward helping those who are less fortunate, to help the “have nots.”

One such effort we have is the Settling Our Suits program with the Lake County Community Transition Court (CTC). This is a program designed to help individuals transition from the Indiana Department of Correction (IDOC) back to their community while still being supervised. The CTC modifies the individual’s placement eight to 12 months prior to their earliest possible release date. The idea is to help those individuals re-engage in the community by offering more support than they would otherwise receive if they were simply released from the IDOC. The LCBA supports this program by having an ongoing professional clothing drive for participants to use for job interviews, work, and court hearings. Hundreds of articles of clothing are donated on a consistent basis at designated drop-off locations across the county.




One of the most vulnerable populations that has suffered during the pandemic is children. Most are familiar with one of the most popular songs of the 1980s, “The Greatest Love of All” by singer Whitney Houston. In that song, Houston urges us to show children all the beauty they possess inside, to give them a sense of pride to make it easier, and to let their laughter remind us of how things used to be. In a county that has many people living in poverty, the LCBA has tried to bring hope and smiles to these children. As our LCBA President Angela M. Jones often says: “I look forward to continuing with our proudest achievement: providing each other and those whom we affect as a profession with hope in uncertainty.” This message of

hope has channeled itself through the LCBA and to our local partners working with children. In fact, our bar association worked to organize and assemble 130 Easter baskets for children in need at the Carmelite Home, Village of Hope, and Sojourner Truth House. LCBA members collected toys, healthy snacks, books, chocolate bunnies, and gift cards during this Spring Outreach Project.

We are currently working on a Christmas in July event to support our ongoing efforts with the Marine Corps Reserve’s Toys for Tots program. We strive to make this a year-long event because we believe children should not be without. We hope to collect 200 toys by the end of July. Additionally, to support families

and children, we also adopted 34 Angel Tree families through a local foster care program, Kids Peace, this past winter and hope to adopt even more families this year.

Another significant outreach event that we will be having this summer is a Unity March, which we plan on doing with our affinity bars and the Indiana State Bar Association. The purpose of the march is for the legal community to come together and show we are united and do not tolerate hate and discrimination amongst our legal community and citizens within our local community. So much has happened recently in our country to show division and we want to show unity and togetherness. We were all deeply moved by Indiana Supreme Court Chief Justice Loretta Rush’s Statement on Race and Equity in June 2020 and are keenly aware that there is much work still to be done.

Dr. Martin Luther King so eloquently once stated: ‘Everybody can be great because anybody can serve. You don’t have to have a college degree to serve. You don’t have to make your subject and verb agree to serve. You only need a heart full of grace. A soul generated by love.’ Well, as members of the LCBA, we do have degrees in law. We want to be great by serving our community and are using our platform and voice to make a difference in our region and the state. We know our efforts are not in vain, and we can serve as a model for our state and profession of what real commitment by a bar association can accomplish in the area of outreach. We also hope when our efforts are counted we have not only prepared a path for those who may not have one, but also **left a trail** for others to follow. 

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# To the Editor:

Recently, I received my copy of “Res Gestae,” which is typically an enjoyable read, even if I do not identify with each of the articles. It is normally a fresh perspective from other attorneys around the state and I think the ISBA does a great job of accumulating a diverse group of articles.

I write, however, to address an article I found to have fallen below my expectations and quite unsettling. The piece in question was an article on virtual proceedings in the February “Res Gestae.” While the premise behind the article seems perfectly appropriate for this day and age, nearly a quarter of the article is dedicated to discussing a 2017 disciplinary complaint against a fellow member of the bar. I found the piece troubling on a variety of levels, the least of which is that it is wholly misplaced for the theme of the article — at no point in the particular disciplinary matter is anything “virtual” discussed. How then was it germane at all to the article?

Particularly troubling to me, however, was the repeated use of the attorney’s name — which I will not do here — no fewer than seven times throughout the article. In fact, the author or the editor of this section, deemed it appropriate to put in a standalone quote “[Attorney] falsely told the court that he had been misquoted by the reporter.” This has nothing to do with virtual decorum to the court or how one might conduct oneself in the virtual age. I seriously question the decision to use attorney’s name throughout the article when other means, initials perhaps, would have accomplished the same goal. I know the *attorney* well and consider him a colleague. I do not agree with his actions that resulted in the discipline complaint, but I know that he served his disciplinary sentence, which was quite severe. Now, attorney has resumed his practice, but will continue to pay for his error now that “Res Gestae” has placed his name in print four years later.

Finally, though lambasting the attorney for his errors in judgment, the article utterly fails to recognize that the attorney acknowledged his fault, served his disciplinary sentence, and is now trying to resume with his profession — despite what this article has done to hinder that continued progress forward. By highlighting this article, the ISBA has essentially published a statewide article associating his name with poor ethics. To me, having done so without any apparent need or even utility, is a shame.

Our profession is by its very nature a competitive one in which we strive to “better” our fellow attorneys. I have personally found the ISBA generally serves as an important reminder that it is perfectly normal for attorneys to help each other be the best attorneys for our clients despite our competitive mentalities. I hope future articles reflect that sentiment as well.

Sincerely,

Clifford Robinson

By Jack H. Kenney



# APPELLATE WAIVERS, PARENTAL PRESENCE IN COURTROOMS AND OTHER HOLDINGS

In March, the Indiana Supreme Court issued an opinion reminding trial judges that consistency matters in guilty plea, sentencing, and subsequent sentencing orders involving waivers of the right to appeal. In another opinion, the court held that a child tried as an adult does not have an automatic right to have a parent with them in the courtroom. The full text of all the Indiana appellate court decisions, including those issued not-for-publication, are available via Casemaker at [inbar.org](http://inbar.org) or the Indiana Courts website at [in.gov/judiciary/opinions](http://in.gov/judiciary/opinions). A more in-depth version of this article is available at [inbar.org](http://inbar.org).

## SUPREME COURT CASES

### Trial courts must be clear and consistent regarding appellate waivers

In *Williams v. State*, 2021 Ind. LEXIS 177, (March 16, 2021), the defendant entered into a guilty plea agreement and at his sentencing hearing, the judge advised defendant he was waiving the right to appeal his conviction but failed to clarify whether he was also waiving his right to appeal his sentence. The court granted transfer and issued a per curiam opinion to remind trial judges that “the plea agreement, guilty plea

and sentencing hearing colloquy, and sentencing order must be clear and consistent as to whether a defendant waives only the right to appeal the conviction or the right to appeal the conviction and sentence.” See also *Johnson v. State*, 145 N.E.3d 785, 786-87 (Ind. 2020).

### **Parent of a child tried in adult court can remain in courtroom despite a witness separation order if shown to be essential**

In *Harris v. State*, 2021 Ind. LEXIS 207 (March 24, 2021) the court held that children being tried for crimes in adult court do not have an automatic right to have a parent with them during their trials. Where the parent is subject to a witness separation order, the child defendant can identify the parent’s presence as “essential” to presentation of the child’s defense under Evidence Rule 615(c) to allow the parent to remain in the courtroom despite a witness-separation order.

### **COURT OF APPEALS CASES**

The Court of Appeals upheld a criminal-organization sentence enhancement despite the absence of statutory factors. In another case, the court determined that the language “dating or has dated” in Indiana’s domestic battery statute is not unconstitutionally vague.

### **Statutory factors to support criminal-organization sentence enhancement are not mandatory or exclusive**

Indiana’s criminal-organization statute enhances penal consequences for committing one or more felony offenses in connection with a criminal organization. See Ind. Code § 35-50-2-15. A “criminal

organization” is defined by Ind. Code § 35-50-2-1.4 as a formal or informal group with at least three members that assists in or participates in the commission of a felony. In *Parrish v. State*, 2021 Ind. App. LEXIS 98 (March 30, 2021), the Court of Appeals found sufficient evidence to support the criminal-organization enhancement, relying on the plain meaning of the word “member.” Although the statute is intended to apply to gang-related activity and lists 10 factors that may be used as evidence that a person was a

member of a criminal organization, those factors are neither mandatory nor exclusive. None of the statutory factors applied in this case, but the court was bound by the decision of the trier of fact because the legislature has provided that an informal group of people who assist or participate in a felony constitutes a “criminal organization.”

### **“Dated or has dated” language in statutory definition of “family or household member” is not unconstitutionally vague**

**“None of the statutory factors applied in this case, but the court was bound by the decision of the trier of fact because the legislature has provided that an informal group of people who assist or participate in a felony constitutes a 'criminal organization.'”**



Guy O. Kornblum  
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In addition to litigation and dispute resolution services, Guy also serves as an expert witness in legal malpractice and cases relating to insurance claims.

Guy is a native Hoosier and alumnus of Indiana University. He is a member of the Indiana and California bars, and certified in Civil Trial & Pretrial Practice Advocacy by the National Board of Trial Advocacy.

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The term "family or household member" for purposes of Indiana's domestic battery statute has been defined in Indiana Code § 35-31.5-2-128(a)(1)-(3) to mean an individual who "is a current or former spouse of the other person," a person who "is dating or has dated the other person," and a person who "is or was engaged in a sexual relationship with the other person." Ind. Code § 35-31.5-2-128(a)(1)-(3). On appeal of his domestic battery conviction, Thomas Jackson argued that the phrase "dated or has dated" as contained in the statutory definition of "family or household member" is unconstitutionally vague because it "encompasses the mundane to the intimate." The court disagreed,

concluding that "dating" is within the range of activities included in the statute. *Jackson v. State*, 2021 Ind. App. LEXIS 82 (March 19, 2021).

**Erroneous forfeiture of right to counsel and error in failing to investigate eligibility for pauper counsel**

In *Vonhoene v. State*, 2021 Ind. App. LEXIS 79 (March 18, 2021), the record did not support the trial court's finding that Vonhoene either waived or forfeited her right to the assistance of counsel by her conduct. Further, Vonhoene's statements before her trial that she did not know how to secure court-appointed counsel triggered the trial court's

duty to conduct further inquiry regarding her eligibility for pauper counsel. 



# ABA FREE LEGAL ANSWERS EXPANDING FEDERALLY FOR VETERAN AND IMMIGRATION ISSUES

By Mary Fondrisi



The July 2019 census reported over 800,000 Hoosiers living in poverty, and more than 650,000 people with disabilities are Indiana residents. Due to COVID-19 these figures are rising rapidly, leaving many Hoosiers without the ability to provide for their families or obtain assistance for their legal issues. In-person legal aid clinics that were thriving pre-COVID have been stymied during the pandemic, lessening the ability for timely contact with those having legal issues, particularly in the family, eviction, consumer debt, and foreclosure areas.

The ABA Indiana Free Legal Answers (IFLA) website, administered by the ABA in conjunction with Pro Bono Indiana (PBI), instituted in 2016 provides an even greater measure of civil legal aid relief today. This on-line program allows qualified adult residents who are income eligible to pose civil legal questions to volunteer attorneys who respond virtually.

Participation in this pro bono publico program, which creates a short-term, limited scope legal representation, requires advance acknowledgment by the client that such representation will not continue beyond this limited virtual consultation. Questions are protected by the attorney-client privilege



rules and provide a means for volunteer attorneys to meet the annual aspirational goal of 50 pro bono hours.

These volunteers, who assist by sharing their expertise or researching answers to poverty law questions outside their expertise, are often a godsend to the underprivileged. Taking the time to listen and respond compassionately often surpasses the legal assistance. Many volunteers find that assisting in a meaningful way means no more than being able to provide

answer questions related to veteran issues must be accredited with the U.S. Department of Veterans Affairs (VA) and follow the VA accreditation [www.va.gov/ogc/accreditation.asp](http://www.va.gov/ogc/accreditation.asp) requirements and standards. In the immigration area, volunteers can assist with deportation, green cards, DACA, and naturalization.

Federal Free Legal Answers (FLA) fills a critical legal need during the pandemic when we are unable to meet in person and many are burdened by an inability to access justice. Federal FLA is a


**“These volunteers, who assist by sharing their expertise or researching answers to poverty law questions outside their expertise, are often a godsend to the underprivileged.”**

clients with the proper identification of their legal issue, additional resources, or links to self-help sites, such as Indiana Legal Help forms.

The ABA implemented a separate federal website in January 2021 to specifically address veteran and immigration civil legal questions. See, the ABA Federal Free Legal Answers website: [abafederal.freelegalanswers.org](http://abafederal.freelegalanswers.org).

Federal website volunteers can field questions for financially eligible veterans, their spouses, and dependents regarding benefits, discharge upgrades, and other related issues. Anyone registering to

collaboration of the ABA Standing Committee on Legal Assistance for Military Personnel, the ABA Standing Committee on Pro Bono & Public Service, the ABA Commission on Immigration, and the American Immigration Lawyers Association.

The purpose of these websites is to increase access to advice and information about non-criminal legal matters for those who cannot afford it. There is no fee for using the system or the advice and information provided by the attorney. Anyone serving a criminal sentence or posing a criminal law question is ineligible for these services. 



# WHAT IS CIVILITY AND “OFFENSIVE PERSONALITY” ANYWAY?

---

**Y**ou likely remember that ceremony where you were sworn in as an attorney. And you likely remember raising your right hand and taking an oath. But be honest. Do you remember exactly what you solemnly swore to do?

As a reminder, you swore to “support the Constitution” of the United States and the State of Indiana, which you have done. You also swore to “maintain the respect due to courts of justice and judicial officers” and we can probably agree that you lived up to that part of your oath as well. You also swore to “maintain the confidence and preserve inviolate the secrets of my client at every peril to myself.” We are sure you took care of your clients’ secrets, as you would not last long if you didn’t. With regard to “every peril” to yourself, let’s be easy

graders and assume you fulfilled that part, too. By the way, all of this is contained in the Oath of Attorneys in the Indiana Admission and Discipline Rules. See Ind. Admis. Disc. R. 22.

Have you lived up to that one at all times? What would your spouse say? More importantly, what does “offensive personality” mean? Does it mean that you can be disciplined for simply engaging in uncivil behavior? A recent Hearing Officer’s

define what it might mean to have an “offensive personality” and how uncivil behavior can lead to disciplinary trouble.

### **Is a lack of civility a basis for a disciplinary finding?**

The Indiana Supreme Court has placed an emphasis on Indiana attorneys acting in a civil manner. In fact, the Indiana Supreme Court stated specifically in the Preamble to the Indiana Rules of Professional Conduct that “[w]hether or not engaging in the practice of law, lawyers should conduct themselves honorably.”

Of course, the Indiana Rules of Professional Conduct prohibit certain behavior that would be considered by many to be less than “honorable” and in fact, downright “uncivil.” For example, one attorney violated Ind. Prof. Cond. R. 8.4(b) when he threw a soft drink at opposing counsel, grabbed him near or around the neck, and restrained him in his chair in response to deposition questioning of the attorney’s wife. *In re A.M.*, 652 N.E.2d 863, 864 (Ind. 1995). The Indiana Supreme Court noted that the “[r]espondent’s conduct demonstrated a complete lack of civility and a total breakdown of self restraint.” *Id.* The court also found this violated Rule 3.5 because the attorney engaged in conduct intended to disrupt a tribunal. The attorney received a 60-day suspension.

It goes without saying that an attorney does not have to engage in physical assault to warrant disciplinary action for uncivil behavior. During a recess of a hearing and outside the presence of a judge, one attorney threatened another attorney by stating in part,

## **“Have you lived up to that one at all times? What would your spouse say? More importantly, what does “offensive personality” mean?”**

One part of the oath has been litigated several times in disciplinary cases: the part where you swore to “abstain from offensive personality.” Remember that? It is broad and has no limitation on whether you only need to abstain from “offensive personality” when you are practicing law.

Report adopted by the Indiana Supreme Court stated: “Indiana Courts give us no guidance regarding whether a disciplinary charge based on the Oath of Attorney is grounds for attorney discipline.” *In re J.C.*, 163 N.E.3d 280 (2021) (citing November 23, 2020 Hearing Officer’s Report in Cause No. 19S-DI-00310) (emphasis added). In this article, we hope to

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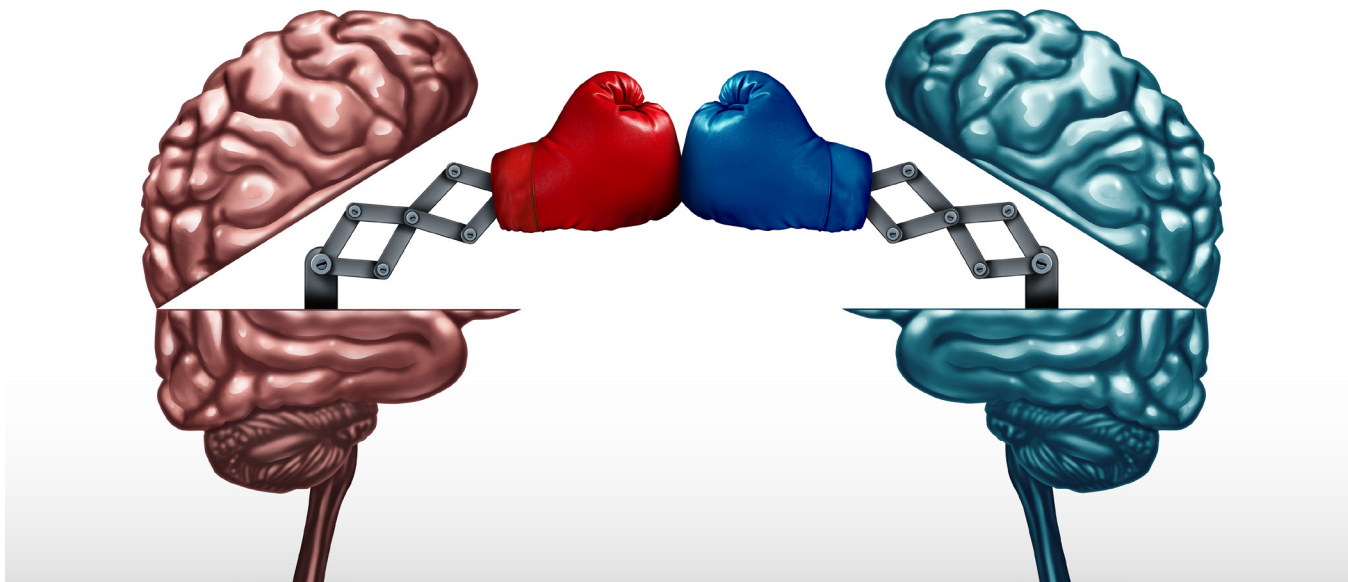
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“I’m going to come over to your house and beat you half to death with a baseball bat.” *In re R.B.*, 657 N.E.2d 738, 739 (Ind. 1995). This conduct resulted in violations of Rules 4.4, 8.4(b), and 8.4(d) and a 30-day suspension. Even though the court didn’t find an explicit violation of the oath under Ind. Admis. Disc. R. 22, the court did comment respondent’s actions were “contrary to the Oath of Attorneys which requires abstention from offensive personality.” *Id.* at 740.

Non-threatening but uncivil words also can get an attorney in trouble. The Indiana Supreme Court once found a lawyer violated Rule 8.2(a) for falsely accusing a judge of committing malfeasance in the initial stages of the administration of an estate. *In Re P.O.*, 10 N.E.3d 499, 500 (Ind. 2014). In concluding that a violation of 8.2(a) had been committed, the court held that the “Respondent’s repeated and virulent accusations that” the judge “committed malfeasance . . . were not just false; they were impossible because” the judge “was not even presiding over the Estate at this time.” *Id.* at 501. Therefore, the respondent in *P.O.* had no “objectively reasonable basis” for making the statements and his freedom of speech defense failed. *Id.*

Uncivil behavior is frequently found to be a violation of the Indiana Rules of Professional Conduct. However, it is usually accompanied by “something else.” For example, rude or obnoxious comments about a judge may not violate the Rules of Professional Conduct if there is an “objectively reasonable basis” for making the comments. Similarly, threats of violence or actual violence are more likely to become disciplinary charges if they take place in a courtroom or before a “tribunal.”

What about “uncivil” or “offensive” conduct that doesn’t fit squarely within a particular provision of the Rules of Professional Conduct? In an attempt to answer that question, we will explore what “offensive personality” is.

#### What is an offensive personality?

What does it mean to have an “offensive personality?” Well, it is a little difficult for us to describe. Maybe it’s a “you know it when you see it” situation. Or perhaps having

Continued on page 38...

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*By Justice Steven David  
& Angka Hinshaw*



# LET US TALK ABOUT **RACISM**

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**S**ince January 2021, hundreds of attorneys, judges, and law students have journeyed with us as we discussed racism. The featured panelists in ISBA's *Open Conversations* program have opened their hearts and shared intimate experiences of racism. All of the panelists are successful individuals, but you would never know the struggles they faced and continue to face because of how they look and the color of their skin. As a reader of this article, you are successful too, in your own way. You graduated from law school, passed the bar, practiced law, and perhaps along the way you received accolades or recognition for your successes. For attorneys and judges of color, the journey has been fulfilling but at the same time challenging, just like most of yours, with one challenge many of us don't have and many more of us don't understand. It's not because we don't want to, but because it is hard to understand, hard to accept, the history is not pleasant, and we would just rather not

talk about it: being non-white. The practice of law is tough. We are sure you were told, “In order to succeed in your legal career, you will face challenges, set-backs, and barriers.” But we ask you to pause and think about the additional challenges and/or different challenges, set-backs, and barriers that our colleagues in law school, in the practice, and on the bench experience solely because of their black, brown, or yellow skin. How does one continue to persevere and succeed with energy and confidence in the system? And how can we learn more about each other regardless of the color of our skin, our age, or any number of different characteristics and beliefs that make each of us unique so that we can understand each other better and appreciate and respect each other more? Thanks to YOUR willingness to listen, reflect, share, and learn we are doing just that.

In February, *Open Conversations* welcomed two black women attorneys and one black woman judge. Each shared her experiences as a woman of color practicing law and how her tenacity carried her through episodes of gender and racial bias. One of the experiences shared was praise for being articulate and well spoken. On its face, it’s a compliment and many would agree that it is. The reality is the comment was interpreted and remembered as a slight, quite frankly as a surprise by the commenter that here was a person of color who did not fit within the commenter’s stereotype or biases. Probably unintended as a slight and intended as a compliment, but certainly not very well thought out and most likely not the commenter’s typical response to a person not of color. This is the value of these conversations. They offer an

opportunity to view the world, our legal profession, and beyond from different perspectives so that we all can be better people. There were so many more lived experiences that were shared that one article cannot convey the emotion and impact of those experiences.

In March, two Texas judges of color joined the *Open Conversations*

program. One of the judges shared a childhood accident that almost robbed the future judge of sight when a white doctor dismissed concerns of the judge’s parents because the doctor and the hospital were reluctant to provide a bed for the needed surgery to a child of color. Both judges shared experiences (at separate and unrelated events) when they were

Paul Kruse                      John McLaughlin                      Tony Patterson

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dressed in business suits attending a professional legal function and were mistaken for wait staff instead of an attorney or judge attendee. They didn't even receive apologies for the error. There are many experiences, whether subtle or overt, that are endured by your peers, your friends, and other members of our profession. These experiences are often unsaid and endured as the only way to overcome.

But the way it has been is not the way it should be or the way it will be. Together, one step at a time, each of us, some of us more quickly than others, can listen more, learn more, understand more, and do more to eliminate racism. Please continue

to offer your suggestions for future programing and questions, and give grace and accept grace.

*Open Conversations* has more future programs that will give voice to the lived experiences of Asian, Asian Pacific, Latino, and Native American attorneys and judges. It is important for people of color to be heard and for their experiences to be shared. The feedback from past program attendees has been overwhelmingly supportive and positive. Here is a glimpse:

*Great session today. Don't Stop.*

*Powerful, honest testimonials.*

*It really brings this topic home when you hear what my fellow colleagues have had to fight through given the racism in this country and within the legal profession.*

*These sessions give me inspiration.*

*The conversation was GREAT. I appreciate the vulnerability of all those involved. Thank you!*

*One of the most interesting series I have experienced.*

*I think this hour was probably the most personal and powerful of the series so far.*


*I was really impressed by the authenticity and vulnerability of the speakers.*

*Powerful program. Great speakers.*

*Memorable experiences shared led to memorable takeaways. Very worthwhile.*

*This series has been very meaningful. Thank you for creating a safe space to share stories, ask questions, and push us to be better people and professionals.*

*Excellent discussion--so grateful for the presentations.*

We all need this *Open Conversations* platform to safely speak and listen. It takes a lot of vulnerability and courage to engage in healthy, progressive conversation about race and racism. As hard as it is to hear about the actual impact of racism, it's even harder for the person experiencing it. Be an ally. Join us for the next program of *Open Conversations: Racism and Racial Injustice*. 

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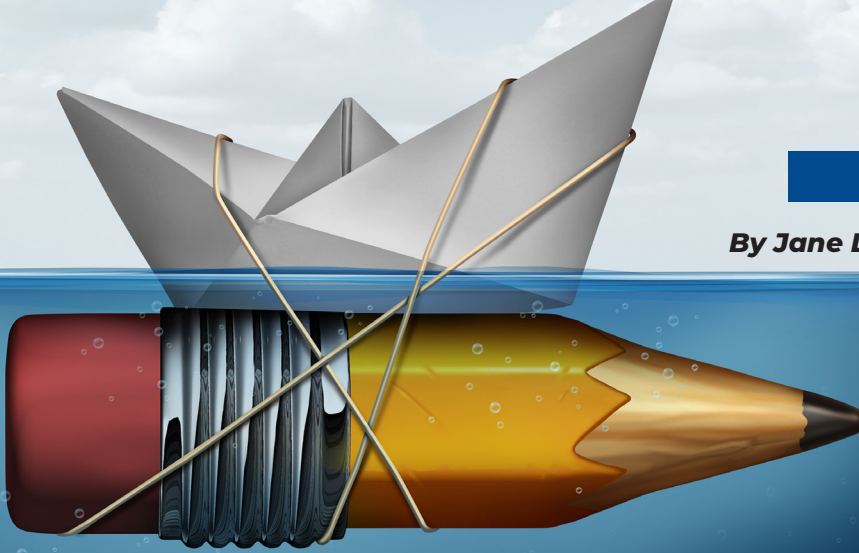
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By Jane Dall Wilson & Susanne Johnson



# APPELLATE CIVIL CASE LAW UPDATE (MARCH)

**This article highlights Indiana Supreme Court and Indiana Court of Appeals civil opinions issued in March 2021.**

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**I**n *G&G Oil Co. of Indiana v. Continental Western Insur. Co.*, ---N.E.3d ----, 2021WL 1034982 (Ind. Mar. 18, 2021) (David, J., in which Rush, C.J. and Massa, Slaughter, and Goff, JJ., concur), the Indiana Supreme Court held a genuine issue of material fact existed as to whether ransom paid as a result of an insured's ransomware attack was covered under a crime coverage provision, even though the insured had declined the insurer's computer hacking and computer virus coverage. G&G Oil became locked out of its computer system after a ransomware attack, which led G&G, after consulting with law enforcement, to pay hackers bitcoin as ransom to regain access to its computer system. G&G made a claim on its insurer, Continental,

to recover proceeds. Continental denied G&G's claim on the ground that the payment did not constitute a fraudulent transfer of money so as to warrant crime coverage. The trial court agreed, but the Indiana Supreme Court held that the phrase "fraudulently caused a transfer of money" unambiguously meant to obtain by trick, and a genuine issue of fact existed as to whether the ransomware attack on G&G's system was the result of a trick. Likewise, G&G's bitcoin payment constituted a loss "resulting directly from the use of a computer" because only after it paid the amount was G&G able to use its computers. The court reasoned that G&G's transfer of bitcoin was


akin to a payment under duress because G&G could not access its computer system without payment. The court reversed the trial court's order granting summary judgment to the insurer and remanded for further proceedings.

In *Poore v. Indianapolis Public Schools*, 164 N.E.3d 130 (Ind. 2021) (per curiam), the Indiana Supreme Court summarily affirmed the opinion of the Court of Appeals regarding claims that IPS should have paid for a student's advanced math class at Butler University except it vacated one section of the court's reasoning as to why IPS was not negligent. The court reasoned

financially support the child without justification. The mother spoke to the child over the phone for an average of 13 minutes a month and did not exercise her visitation rights. Though the mother had some income, did not pay for her own living or food expenses, and had taken out a loan to pay for her schooling, she did not pay anything to her court-ordered child support.

In *Clark County REMC v. Reis*, ---N.E. 3d ---, 2021 WL 1182302 (Ind. Ct. App. Mar. 30, 2021) (Vaidik, J., in which Weissmann, J. concurs and Bailey J. dissents), a divided Indiana Court of Appeals concluded that a board policy to provide health insurance benefits to prior directors of the REMC constituted a contract to do so, which was breached when the REMC revoked the policy.

In *WTHR-TV v. Hamilton Southeastern School District*, ---N.E. 3d ---, 2021 WL 908513 (Ind. Ct. App. Mar. 10, 2021) (Kirsch, J., in which Bradford, C.J. and May, J. concur), the Indiana Court of Appeals concluded the trial court properly denied a motion to compel filed by the TV station for a release of documents and other additional information from an employee's personnel file but invited the General Assembly to consider clarifying portions of Indiana Code chapter 5-14-3 (APRA) relating to the release of information on employee disciplinary actions.

The full text of all Indiana appellate court decisions, including those issued not-for-publication, are available via Casemaker at inbar.org or the Indiana Courts website, in.gov/judiciary/opinions. 

**"The court reasoned that G&G's transfer of bitcoin was akin to a payment under duress because G&G could not access its computer system without payment."**

that IPS fulfilled the duty originally alleged in the trial court—to provide the student the classes necessary to graduate with a Core 40 Academic Honors Diploma—and another claim was waived.

In *Matter of Adoption of I.B.*, 163 N.E.3d 270 (Ind. 2021) (Goff, J., in which Rush, C.J. and David, Massa, and Slaughter, JJ. concur), the Indiana Supreme Court affirmed the trial court's ruling that consent to adoption was not necessary from the biological mother when the mother failed for a year to communicate significantly with the child and

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# RULE OF LAW AND SUCCESS FOR THE AMERICAN EXPERIMENT

**By Chief Justice Randall T. Shephard**

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## **LAW DAY, MAY 2021**

*Randall T. Shephard is a part of the Evansville Bar Association editorial board and former Chief Justice of the Indiana Supreme Court. He has written this article in celebration of Law Day.*

A reporter once asked Alan Greenspan what he thought had led to the long-term success of this country. He was a good person to ask, as the legendary and enduring chair of the Federal Reserve.

One assumption built into the question, of course, was an issue we still debate: How successful has the United States been? To be sure, our country still has issues on which we have not been altogether successful, like race relations and equal opportunity.

Still, I'll affirm the overall rating of our success by saying that the United States of America has created more opportunity and more security for people from more walks of life than any other nation in the whole history of humankind.

So, what's been the secret of our success?

When I was in grade school, we all thought the answer was easy. America had been blessed by an abundance of natural resources which could be turned to the benefit of its citizenry. Plenty of superb

farmland, abundant water resources, lots of minerals. Surely that was the answer. But it wasn't the answer Greenspan gave.

In later years, quite a different explanation for American success became popular. By virtue of the Constitution, we had promoted the free flow of people and goods from sea to shining sea, and we had done it something like 200 years before six European countries created the Common Market. This freedom of movement in our vast country had made growth and commerce so much easier than it would have been if we had struggled with 50 state borders and taxes and permission required for crossing. But that wasn't Greenspan's answer either.

Greenspan said the secret to our success was America's commitment to the Rule of Law.

That feature of our country's experience meant that all sorts of things in life would go better.

It meant that we would have reliable ways of redressing grievances. If you made an agreement or a contract with someone and your partner reneged, there would be a way to enforce the agreement. It meant that someone who was injured by the negligence of another would have a way to seek compensation. It meant that the interests of individuals in fields like family and property could be enforced.

Making all of this real and workable has been the special mission of the legal profession – lawyers and judges and their associates – and it is the reason why Law Day is worth celebrating. It is a cause that matters nearly every day of our lives.

Sustaining this part of American life is a special part of why the bench and bar put our shoulder to the wheel. I'll mention here two aspects of the Rule of Law that make it still an important element of our national success. One is visibility and participation. The other is the capacity for reform.

As for visibility, let's talk about ease of access and public participation. One dramatic achievement in Indiana has been to provide access through electronics. How can people learn about cases in which they are involved? How can they conduct

certain business tasks without going to a courthouse? How do we make judicial elections and retention votes more visible? How do we make juries more inclusive? These have all been projects in which Indiana's bench and bar have been engaged.

As for these reforms and others, Indiana Chief Justice Loretta Rush recently declared in her virtual State of the Judiciary address, "Complacency can never be the norm in providing justice."


**"These sorts of efforts have been close to the hearts of Indiana's legal players"**

In a field like incarceration, for example, Indiana has been way ahead of the pack in examining who needs to be held before trial, a prominent topic on our national agenda at present. Not only has Indiana revamped pre-trial procedures for adults, its Juvenile Detention Alternatives Initiative has addressed the individual situations and needs of young people who are caught up in the system for one reason or another.

Likewise, Indiana has created more than 125 courts with specialized dockets and tools to solve problems like drug addiction, family disruptions, and the special difficulties faced by veterans, to name a few.

And lawyers and bar associations have been at work helping citizens who confront the possibility of mortgage foreclosure or eviction. They also periodically organize "ask a lawyer" opportunities for citizens who are wondering just where to begin. Thousands of lawyers volunteer their time to represent people who cannot otherwise afford legal assistance.

These sorts of efforts have been close to the hearts of Indiana's legal players, and that fact has made it much easier to deal with the crisis of the pandemic. From devising new techniques for conducting jury trials to examples like Evansville moving its high-volume cases to the city's convention center where social distancing is more feasible, the legal system has adapted.

All of these efforts are part of what makes our nation stronger, affirming Alan Greenspan's idea that American commitment to the Rule of Law has been so crucial to our collective success as a society. 

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Continued from page 12

### **I-765 Application for Employment Authorization**

Certain aliens who are in the United States may use this form to request employment authorization and an Employment Authorization Document

### **I-981 Petition for U-Visa Application**

If you are an alien and are a victim of a qualifying criminal activity, this form is used to petition for temporary immigration benefits for yourself and your qualifying family members

### **I-821D Consideration for Deferred Action of Childhood Arrivals (DACA)**

### **I-821 Application for Temporary Protected Status (renewals)**

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### **N-400 Application for Naturalization**

### **N-600 Application for Certification of Citizenship**

This form is used when attempting to demonstrate that an individual has acquired citizenship or was a citizen at birth

Estrada has seen a steady flow of clients since partnering with the Hammond Legal Aid Clinic. “It is exciting to be able to assist mixed immigrant/U.S. citizen families through the clinic,” Estrada said. “Mayor McDermott has recognized that the most important legal issue in some Hammond residents’ home is a person’s immigration status. It is truly a progressive stance.”

Potential clients are screened and most will be notified if they qualify for the free services within two or three days. Once they are qualified, Estrada meets with potential clients to determine whether he can assist them with their issue. One recent case is Maria (real name altered for privacy reasons), a DACA recipient who was brought to the United States at a young age from Mexico. She spent the majority of her life living in the United States, essentially making it the only country that she has ever known. She married a U.S. citizen and has multiple U.S. citizen children. Estrada is assisting Maria through the I-130 Petition for Alien Relative process which will also require a I-601A Provisional Waiver for Inadmissibility (the waiver).

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The waiver will require Estrada to demonstrate extreme hardship to the U.S. citizen spouse if the family is forced to separate or relocate due to Maria's immigration status. Through this process, if successful, Maria will go from DACA status to a Legal Permanent Resident without any measurable separation from her U.S. citizen spouse and children.

In my time as executive director of the Hammond Legal Aid Clinic, I have seen our attorneys lift people out of despair and literally change people's lives. While the cases we typically handle sometimes

**“They overcame  
hopelessness and despair.  
And now, as Americans  
see the light at the end of  
this tunnel, we are all  
optimistic that normal  
is right around  
the corner.”**

may seem like small matters to many, to our clients it is the most important thing in their lives. This past year I think many Americans truly came to appreciate the smallest victories in everyday life. They overcame hopelessness and despair. And now, as Americans see the light at the end of this tunnel, we are all optimistic that normal is right around the corner. And in Hammond, thanks to the immigration program at the Hammond Legal Aid Clinic, people with immigration issues are also hopeful that they, too, can see the light of a brighter day. 



# THE NIL FRONTIER:

## CHANGES ON THE HORIZON FOR NCAA AMATEURISM RULES

**By Kaitlyn E. Collyer, Kelleigh I. Fagan  
& Jaclyn Lawrence**

As March Madness took over the State of Indiana this past March and April, madness was ensuing in both the Supreme Court and state legislatures regarding the rights of NCAA student-athletes. College athletes across the nation have started fighting for their rights to earn compensation for the use of their name, image, and likeness, commonly referred to as NIL. Rutgers basketball player Geo Baker tweeted, “Someone on a music scholarship can profit from an album. Someone on academic scholarship can have a tutor service. For [people] who say ‘an athletic scholarship is enough.’ Anything less than equal rights is never enough.” About a year before this, the NCAA started the process of discussing potential NCAA legislation that would allow student-athletes to profit from their NIL.

Currently (as of the date of the writing of this article in May 2021), NCAA rules require student-athletes to forfeit this opportunity to retain eligibility. The movement to permit student-athletes to profit from their NIL began with the State of California passing a state law that allowed just that, and other state legislatures followed suit. Eleven

other states have since passed their own NIL legislation and Alabama, Florida, Georgia, New Mexico, and Mississippi have laws going into effect on July 1, 2021. Further, NCAA President Mark Emmert publicly stated that new NIL legislation would be approved by the NCAA “before, or as close to, July 1,” and if passed, student-athletes in all states would be able to profit off the use of their NIL. The approaching effective dates give urgency to the matter

**“It is not just states that are getting involved with the NIL game, the federal government is, too.”**

and require both the NCAA and lawmakers to act fast to keep the playing field level.

The passing of NIL compensation legislation would give student athletes the right to earn money for endorsements, just like other regular

students. Athletes could be paid for social media posts, appearances and other endorsements. Most proposed NIL legislation require parameters around NIL rights. For example, some legislation prohibits promoting obscenities or certain products like alcohol, gambling, or performance enhancing drugs.

To be clear, NIL compensation is not “pay-for-play.” Schools are not paying student-athletes for these endorsements, but rather third parties are paying student-athletes.

Like schools push for new facilities to attract the top recruits, many are seeing NIL as a recruiting opportunity—even if many aspects of proposed NIL legislation specifically prohibit using NIL as a recruiting tool. States are showcasing this angle by passing NIL bills with early effective dates because of the fear of missing out on top recruits. State Congressman Scott Bounds of the Mississippi House of Representatives said, “I don’t think any state is happy about this legislation, but we are seeing this as a necessity. [W]e don’t want to lose a competitive edge in recruiting, both athletically and academically, especially against those in the Southeastern Conference.” States

and institutions want to attract high level athletes to keep up with their competition on NIL legislation.

It is not just states that are getting involved with the NIL game, the federal government is, too. In both the 2020 and 2021 legislative cycles, federal legislators introduced multiple bills in both the Senate and the House. While some bills are more restrictive, others are quite broad. Many believe federal legislation will be key to ensuring we do not end up with different colleges subject to different rules.


The United States Supreme Court could also weigh in on college sports in a manner that could affect NIL.

On March 31, 2021, the Supreme Court heard the Oral Argument of *Alston v. NCAA*. The Northern District of California previously found that the NCAA was subject to antitrust scrutiny under the rule of reason (which requires a balancing of anti-competitive and pro-competitive justifications for the conduct being complained of) and that NCAA rules that restricted education-related benefits (like study abroad programs, computers, musical instruments) violated antitrust law. After an appeal to the Ninth Circuit, the NCAA appealed the decision to the Supreme Court.

During the oral arguments in the Supreme Court, the NCAA argued that their amateurism rules should be not reviewed using the standard rule of reason antitrust analysis because they offer a distinct product. To the NCAA, the amateurism aspect is the difference between college and professional sports and the demand for college athletics would decrease without such distinction. The NCAA believes they are

maintaining their procompetitive model and that loosening restrictions would harm the competitive equity between schools with varying levels of funding. The NCAA fears that their member schools with more resources would be able to attract higher-level recruits, effectively widening the gap between larger schools and smaller schools. In **Board of Regents v. NCAA** (1984), the Supreme Court ruled that NCAA rules related to preserving amateurism and promoting competition should be upheld against antitrust challenge. The *Alston* plaintiffs argued that that decision did not suggest that the NCAA amateurism rules be protected from scrutiny forever. *Alston* argued that the college athletics market has drastically changed since 1984 and that Congress, not the Supreme Court, should grant the NCAA an exemption from federal antitrust laws, if that is what they choose. In questioning, Justices appeared to heavily criticize the NCAA's practices, including their position on amateurism. However, Justices often ask questions to test theories and

one cannot assume positions based off questions alone.

NIL legislation and the *Alston* case challenge and weigh the limits on the value of, or benefits to, student-athletes. *Alston* questions the limits of academically related financial aid and the NIL legislation challenges the restrictions on student-athletes from utilizing the free market to their advantage. These issues could soon collide with a decision in *Alston* expected in June or July and certain NIL legislation effective July 1, 2021. NIL and *Alston* are not directly related but how the Supreme Court rules in *Alston* could set the tone for whether certain NIL rights could be subject to antitrust challenge. If the Supreme Court sided with *Alston*, it would be more challenging for the NCAA to legislate limits on name, image, and likeness rules, for fear of causing antitrust violations. If the Supreme Court sides with the NCAA, the NCAA could potentially have freedom to legislate on things like NIL without fear of antitrust implications. 



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## Continued from page 25

an “offensive personality” is a more sophisticated way of saying that an attorney is acting like a male donkey whose first name is “Jack.”

There are several examples of disciplinary decisions finding a violation of the “offensive personality” provision of the Oath of Attorneys. *See e.g., In re D.M.*, 992 N.E.2d 684 (Ind. 2013) (60-day suspension for violations of both Ind. Prof. Cond. R. 8.4(b), 8.4(d), and Ind. Admis. Disc. R. 22 for grabbing a client and pushing him against a rail in the courtroom). In another case, the respondent was found to have violated Ind. Prof. Cond. R. 8.4(b) for driving to court while intoxicated for a hearing, and then separately found to have failed to live up to his oath for making repeated physical sexual advances on the court’s receptionist. *In re J.R.*, 78 N.E.3d 1090, 1091 (Ind. 2016).

Similarly, *In re M.H.*, 53 N.E.3d 405, 406 (Ind. 2015), a lawyer acted uncivilly. He accused an attorney of engaging in “fraud, deceit and trickery.” He also accused the opposing party of “possibly” being racist, sexist, and homophobic.

*Id.* While we don’t condone these comments, we are not certain they alone violate any of the Rules of Professional Conduct. Along with a violation of Ind. Prof. Cond. R. 8.4(d) for engaging in conduct prejudicial to the administration of justice for attempting to gain an advantage in litigation by threatening a grievance, the respondent was found to have violated his oath under Ind. Admis. Disc. R. 22 and was given a severe sanction of a 60-day suspension without automatic reinstatement.

These cases show us that some

**“Professionalism and civility are not optional behaviors to be displayed only when one is having a good day.”**

behavior can be disciplined even though the behavior does not fit neatly into a specific rule. However, there have been plenty of cases where counsel has been reprimanded by the trial and appellate courts for their behavior and no discipline followed.

For example, in considering the appeal of a trial “filled with unnecessary comments back and forth between counsel” and “accusations of misrepresentations, lying, and not following the rules,” the Indiana Supreme Court began its opinion by stating:

Professionalism and civility are not optional behaviors to be displayed

only when one is having a good day. Professionalism and civility are the mainstays of our profession and the foundations upon which lawyers practice law. The public expects it. Fellow lawyers expect it. Our profession demands it.


*Wisner v. Laney*, 984 N.E.2d 1201, 1203 (Ind. 2012).

As noted by the hearing officer in *J.C.*, we are aware of no disciplinary decisions where the sole basis of imposing discipline is a standalone violation of the Oath of Attorneys under Ind. Admis. Disc. R. 22. *In re J.C.*, 163 N.E.3d 280 (2021) (citing November 23, 2020, Hearing Officer’s Report in Cause No. 19S-DI-00310). However, that doesn’t mean it couldn’t happen in the future. There are not too many restraints on what conduct could constitute “offensive personality” and all attorneys are fallible. As members of the bar, we hope that charges of violating the oath would be brought cautiously and only in the most egregious cases.

### Key Takeaways

Professionalism and civility are not optional behaviors to be displayed only when one is having a good day.

At best, a lack of professionalism and civility can distract courts and others from a lawyer’s mission of advocating for his or her clients.

In certain instances, a lack of civility can be a violation of both the Indiana Rules of Professional Conduct and the Indiana Admission and Discipline Rules. At worst, a lack of civility can lead to severe disciplinary sanctions. 

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Proposals (RFP), which includes instructions for preparing the grant proposal, will be published at [www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant](http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant) on or around April 15, 2021. Applicants must file a Pre-application and the grant application through GrantEase: LSC's grants management system.

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