



President's Perspective

LAWYERS IN THE TWILIGHT ZONE

By Amy Noe Dudas

PRESIDENT'S PERSPECTIVE

"There is a fifth dimension, beyond which is known to man. It is a dimension as vast as space and as timeless as infinity. It is the middle ground between light and shadow, between science and superstition, and it lies between the pit of man's fears and the summit of his knowledge. This is the dimension of imagination. It is an area which we call... The Twilight Zone."¹

In 1963, our Indiana Supreme Court took us into the twilight zone.

We deal with facts and how the law applies to those facts. There is nothing more real than a real estate transaction gone bad, an alleged criminal act, or the administration of a loved one's estate. There's no room for "middle ground," nor should there seem to be any legal area "between light and shadow, between science and superstition."

On the other hand, the answer to a "quick" legal question is usually, "It depends." We lawyers certainly recognize that the law is filled with as much nuance as chaos theory—a butterfly flapping its wings when Ms. Smith starts her car could cause Mr. Jones to T-bone her at an intersection thirty minutes later.

This twilight zone of which the Indiana Supreme Court spoke is the very foundation of what we do—the practice of law.

As we all know, the access to justice gap is growing and has been for decades, despite various efforts to shrink it. These efforts have centered on establishing legal aid clinics, incentivizing more pro bono work, and making official court forms available for use by *pro se* litigants.



But a couple of *really* preternatural efforts (at least from most lawyers' perspectives) have been in the works. One is allowing nonlawyers to own interests in law firms, which requires a complete abrogation of Rule 5.4 of the Rules of Professional Conduct. Another is licensing nonlawyers to provide certain law-related services previously constrained to attorneys.

Utah, Arizona, and Minnesota have programs in which nonlawyers are allowed to provide limited legal services like analyzing a prospective client's needs, providing legal advice, drafting and filing documents with the court, engaging in negotiations, and even appearing in court.^{2 3 4} A similar program in Oregon will go into effect in July 2023.⁵



In desperate efforts to shrink the access to justice gap, jurisdictions are re-defining the practice of law.

With that, we have entered the dimension as vast as space and as timeless as infinity, a dimension lying between the pit of our fears and the summit of our knowledge. Here's what our Indiana Supreme Court said in 1963:

Although the practice of law is one of the oldest and most honored professions, the law itself is by no means an absolute science, the practice of which can be accurately and unequivocally defined. For example, under the early English law, some instruments were prepared by scriveners, who were neither barristers nor solicitors, although the preparation of such instruments is now universally considered to constitute the practice of law. On the other hand, persons not admitted to the practice of law are now permitted to represent clients before tax courts, . . .

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where formerly only attorneys were authorized to appear. These changes have come about because of the exigencies of the particular situation. So it is today with regard to the practice of law. There is a twilight zone between the area of activity which is clearly permitted to the layman, and that which is denied him.⁶

The line is arbitrary,⁷ the reason for attorney licensure is based on established character and competence to protect the public "against lack of knowledge, skill, integrity, and fidelity,"⁸ and

irreparable harm can come to the legal interests of individuals assisted by those who are not qualified to act as attorneys.⁹

Ok, then, Supremes, so what is the practice of law? What abilities are so advanced that only licensed attorneys possess them?

Here's a groovy clue from 1979:

The core element of practicing law is the giving of legal advice to a client and the placing of oneself in the very sensitive relationship wherein the confidence of the client, and the management of his affairs, is left totally in the hands of the attorney. The undertaking to minister to the legal problems of another creates an attorney-client relationship... .merely entering into such relationship constitutes the practice of law.¹⁰

Right on. And in 1986, our gnarly Court said, "The exercise of [examining a case and giving advice on what legal steps to pursue] on

behalf of a client constitutes the practice of law and is restricted to persons who have qualified and been admitted to the Bar.”¹¹

In a 2002 case, our Supreme peeps told us that the nonlawyer Respondent was “not trained in interpreting or applying statutes or case law, nor is he trained in identifying, gathering, or introducing admissible evidence, in examining or cross-examining witnesses, or in applying techniques of advocacy in adversarial proceedings.”¹² And in 2010, United Financial was told to chillax based on its nonlawyers’ direct communication with clients and obstruction of its contracting lawyers’ independent judgment.¹³

[Are you tired of my lame efforts to use decade-appropriate slang yet? I get it; I’ll stop now.]

Many of the tasks expressly granted to licensed paraprofessionals have been included in Indiana’s definition of the practice of law. Real estate brokers may not prepare standardized forms (beyond filling in blanks), nor may they give advice or opinions as to parties’ legal rights or the legal effect of instruments.¹⁴ Selecting which immigration form to use and what to insert in the blanks crosses the line.¹⁵ Giving legal advice has been noted as the “core element of practicing law.”¹⁶ Acting for others in legal formalities, negotiations, or proceedings is currently considered practicing law in Indiana.¹⁷

Instead of responding with a resounding “no” to these efforts, we should better define precisely what qualities lawyers possess—rather than which specific services we render—that should be strictly guarded and exercised only by those with the requisite skills, character,

and values. If not, we are not likely to have a seat at the table when these efforts are considered in Indiana.

Let’s start identifying those traits and how we demonstrate them in getting through law school, passing the bar, and representing clients in ways that no one but us should.

Peace out, homies! ☺

FOOTNOTES:

1. *The Twilight Zone, Where is Everybody?* (CBS television broadcast October 2, 1959).
2. *Legal Paraprofessional Pilot Project*, Minnesota Judicial Branch (September 17, 2022), <https://bit.ly/3LoTa3n>.
3. *Licensed Paralegal Practitioner Program*, Utah State Bar Association (September 17, 2022), <https://bit.ly/3qOOVop>.
4. *Legal Paraprofessional Program*, Arizona Judicial Branch (September 17, 2022), <https://bit.ly/3DsSWGC>.
5. Maddie Hosack, *Oregon Joins Growing List of States Empowering Legal Professionals to Help More People*, Institute for the Advancement of the

- American Legal System (July 28, 2022), <https://bit.ly/3UtQQMO>.
6. *State ex. rel. Indiana State Bar Association v. Indiana Real Estate Association, Inc.*, 191 N.E.2d 711, 713 (Ind. 1963).
7. *Id.* at 715.
8. *Professional Adjusters, Inc. v. Tandon*, 433 N.E.2d 779, 783 (Ind. 1982).
9. *State ex. rel. Indiana State Bar Association v. Diaz*, 838 N.E.2d 433, 435 (Ind. 2005).
10. *In the Matter of Perrello*, 386 N.E.2d 174, 175 (Ind. 1979).
11. *State ex. rel. Disciplinary Commission of the Supreme Court of Indiana v. Owen*, 486 N.E.2d 1012, 1013 (Ind. 1986).
12. *State ex. rel. Indiana State Bar Association v. Miller*, 770 N.E.2d 328, 328 (Ind. 2002).
13. *State ex. rel. Indiana State Bar Association v. United Financial Systems Corporation*, 926 N.E.2d 8, 11-12, (Ind. 2010).
14. *State ex. rel. Indiana State Bar Association v. Indiana Real Estate Association, Inc.*, 191 N.E.2d at 713.
15. *State ex. rel. Indiana State Bar Association v. Diaz*, 838 N.E.2d at 435.
16. *Id.* at 444.
17. *Id.*

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