

# Trial & State Court Appeals

1970



Student Protestors, Jerome Hall Law Library

## INDIANA DISORDERLY CONDUCT STATUTE

*Whoever shall act in a loud, boisterous or disorderly manner so as to disturb the peace and quiet of any neighborhood or family, by loud or unusual noise, or by tumultuous or offensive behavior, threatening, traducing, quarreling, challenging to fight or fighting shall be deemed guilty of disorderly conduct, and upon conviction shall be fined in any sum not exceeding five hundred dollars to which may be added imprisonment for not to exceed one hundred eighty days.*

1971

## BLOOMINGTON CITY TRIAL

Gregory Hess' trial began and ended on October 29, 1970, in the Bloomington City Court. During a protest against the Vietnam War at IU Bloomington, Hess said, "We'll take the f\*\*king street later (or again)." The prosecution and defense presented their brief cases. Despite the defense's efforts, Judge David McCrea found that Hess' statement violated the state statute due to his tone, volume, and offensiveness to the majority of Monroe County. Gregory Hess was charged with a misdemeanor of disorderly conduct under Indiana Statute. This was punishable by up to a \$500 fine and/or up to 180 days of imprisonment. Judge McCrea found Hess guilty and fined him \$25 (about \$202 today) and court fees.

## MONROE COUNTY SUPERIOR COURT APPEAL

In 1970, the Bloomington City Court did not keep a written record of its proceedings. Because of this, the prosecution and defense agreed to a statement of facts and evidence for the appeal, meaning that this case was tried *de novo* (in this case a new trial based on agreed upon stipulated facts). Both the prosecution and defense expected to make additional legal arguments before Superior Court Judge James M. Dixon. The judge, without new argument, affirmed the lower court's decision. Judge Dixon provided little explanation of his decision. He did, however, reduce the \$25 fine to \$1. Eventually, he explained that Hess' statement was a statement that "has the tendency to lead to violence and is in violation of the disorderly conduct statute."

1972



State House, Indianapolis, Indiana  
Home of the Indiana Supreme Court  
Library of Congress

## INDIANA SUPREME COURT APPEAL

In 1973, following the Monroe County Court's decision against Hess, his attorney submitted an appeal to the Indiana Supreme Court. Although the State Court did not approve an oral argument, they affirmed the County Court's ruling in a 4-1 decision. In their written opinion, the justices addressed each of the defense's arguments. They concluded that Hess violated the Indiana statute by being loud and deemed his words "fighting words" intended to incite imminent lawless action among the protesters. Additionally, the State Supreme Court upheld the constitutionality of the Indiana statute, asserting that any ordinary individual could understand the language allowed under it.

1973



**HESS AND HIS LAWYERS WERE UNSATISFIED WITH THE INDIANA SUPREME COURT'S RULING AND APPEALED TO THE UNITED STATES SUPREME COURT.**

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