AFRAID OF AIDS:

AIDS PANIC AND GAY DISCRIMINATION THROUGH *STATE OF INDIANA V. HERB ROBBINS*

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In 1988 Herb J. Robbins, a 17-year-old male prostitute, murdered prominent Indianapolis attorney Donald L. Jackson. Robbins then used a "fear of AIDS" defense in court to escape murder charges. This defense highlighted the discrimination faced by gay men and the heightened fear of acquired immunodeficiency syndrome (AIDS) then a little-understood disease. This story fits into larger discussions about AIDS and our cultural and governmental response to it.

For Indiana's population in the 1980s, a fear of AIDS meant a fear of gay men, as gay men were the first people identified with AIDS – in 1981 and 1982 AIDS was known as GRID: gay-related immunodeficiency disease. This opened the door for discrimination in all facets of society – including in the courts – leading to the successful 'fear of AIDS' defense in 1988. That ingrained discrimination has had lasting effects on Indiana's residents and especially on its gay communities including, but not limited to, the criminalization of persons with human immunodeficiency virus (HIV).

In 1985, many states, including Indiana responded to HIV in the blood supply by closing blood banks and passing laws making it illegal for people with HIV/AIDS to donate. The Food and Drug Administration, as well, banned gay or bisexual men from donating blood for fear they might have HIV/AIDS. Indiana also passed a law requiring people with HIV to notify any potential sexual partner about their HIV positive status.

The laws criminalizing people living with HIV were created in direct response to a fear of AIDS in the blood supply, which was only amplified by Ryan White's infamous story.

Connecting gay and bisexual men in Indiana's HIV laws and the FDA's policy on HIV/AIDS only further stigmatized gay men and people living with HIV by associating them with criminal activity, including the criminalization of Donald Jackson when Herb Robbins testified that he killed Jackson for fear he could have gotten AIDS from him.

This paper seeks to understand 1) Why was Indianapolis a place where this "fear of AIDS" defense could succeed? and 2) How does this defense reflect broader discrimination and stigmatization directed toward the gay community?

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"The social and political dimensions of HIV/AIDS are profound and enduring. This observation should not be surprising given the fact that AIDS has deep associations with many of the social taboos of humanity – the fear of epidemics and death; the symbolism of blood as a protector or destroyer of life; the significance of sex in love, passion, and reproduction; and the euphoria, fear, and devastation of illicit drugs."[1]

– Lawrence Gostin

[1] Gostin, Lawrence O. *The AIDS Pandemic: Complacency, Injustice, and Unfulfilled Expectations*. Chapel Hill: University of North Carolina Press, 2004. Page 322.

Synopsis for Full Project

My project is composed of a traditional history paper, two oral histories that I conducted and transcribed, and a screenplay I authored based on a murder and court case central to the paper – *State of Indiana v. Herb Robbins*.

For the history paper, I relied on newspapers, oral histories, public health records, brochures and flyers, books about AIDS from 1985 to 1990, editorials, and the transcript for *State of Indiana v. Herb Robbins* for primary source material. Much of the material is biased from white males' points of view, despite seeking as many racially, sexually, and gender diverse sources as I could for this study. The archives and online sources for Indiana I accessed lack queer voices (including people who openly identified as transgender, gender fluid, or gender non-conforming) for many of the types of AIDS-related sources I used for my study. As well, many sexual and gender identities included in LGBTQ+ or queer communities were not defined or realized in society until after my main period of study. Herb Robbins, Donald Jackson, and all of the main subjects in the courtroom and newspapers were also white, and all but one of them identified as male. Sources in this study come from those identifying as gay, lesbian, and straight to showcase the range of fear of HIV/AIDS. I use the term "gay" to describe the non-straight actors in this account. I use the term "straight" for non-queer actors in this account. Robbins and Jackson likely identified as gay or bisexual (Jackson closeted). Newspaper accounts of the murder and trial presented them as such.

I chose relevant historical scholarship to engage or use for context, but I also engaged scholarship in legal studies, queer studies, American Studies, and sociology in

order to more fully understand the social and political context around the story, AIDS, and the "gay community." All of these sources, plus others not included here, focus on broader society or enormous cities like New York City, Los Angeles, Chicago, Houston and Philadelphia, or on San Francisco as the hub of gay culture. Scholars often focus on the largest cities for their roles as cultural hubs, whereas less attention is paid to the next tier of cities that abound in the Midwest and Mid-South like Indianapolis, Cincinnati, Columbus (OH), Cleveland, Nashville, Memphis, Baltimore, Pittsburgh, Milwaukee, St. Louis, and New Orleans. Scholars talking about LGBT communities and/or AIDS typically focus on enormous cities like Los Angeles and New York, and more recently Chicago, Philadelphia, and Houston. The exception is San Francisco, a smaller city, but a hub of gay culture.

These works forget about cities that are more typical or familiar to much of the American public including those in America's Heartland, a broader interpretation of the Midwest that views the people of the middle U.S states as important to the nation's development. The exception is Timothy Stewart Winter's *Queer Clout: Chicago and the Rise of Gay Politics* (2016), which provides a history of discrimination based on sexual orientation both in laws as written, and as enforced by police, especially in the Midwest. My study fills these gaps, highlighting Indianapolis, a mid-size city that sits in the American Midwest. My analysis of *State v. Robbins* is more representative of the public

response in an average-sized American city. The top ten cities based on population stand significantly above other cities, while Indianapolis sits at a lower tier of size.[2]

Aside from a traditional paper, I wanted to have a traditional public history component as part of the project. Examples include strategic plans, archival record creation, a National Register of Historic Places nominations, oral histories, and more. I chose oral histories, partially due to my background in journalism, but also as a method of finding more information about the case central to my paper. For the oral histories, I was able to find, contact, and convince two reporters who covered the case to talk to me about it – and their careers more broadly. I asked about their origins as journalist, how they came to Indianapolis, and how they started working on stories related to the murder and/or trial. Then I asked questions about the case, including what they remembered about the facts and people involved, followed by their opinions about what was happening. Lastly, I continued the interviews to cover their careers more broadly after the events of the murder and case. I was limited to just those two oral histories for several reasons. Both oral histories were with journalists, so while there were a couple of other living journalists who had worked on the case, I felt that the beat reporter perspective (which they all were at that time) was covered. A beat reporter is a reporter that covers a specific subject, as opposed to a general assignment reporter, who might cover anything that comes up. Examples of beat reporters from the coverage on this story included crime reporters and court reporters. I did reach out to one other

[2] Based on population of U.S. cities in 1990, via Census.gov. Accessed 2019. https://www.census.gov/population/www/documentation/twps0027/tab22.txt.

journalist to do an oral history, but he was in the middle of a move and did not have time to accommodate my request.

As for other perspectives, I ran into a couple of issues. The first was that many people involved were deceased prior to me starting the project. The dead include Donald Jackson (obviously), Herb Robbins, Judge John W. Tranberg, attorney Christopher Zoeller, Jackson's widow, many of Jackson's coworkers, and a few others. A second problem was not being able to find people (or even if they are still alive), including the police officers involved and any of the jurors.

My third and most frustrating problem was finding key voices that did not want to speak with me about the case. Prosecuting attorney Barbara Trathen declined to be interviewed for an oral history. From the few questions I was able to ask her over the phone, Trathen denied ever having known Jackson. She also told me she didn't remember who he was, who Zoeller was, or anything about this case. This is interesting considering it was such a significant case in terms of the prominence of Jackson, especially among other lawyers, and in terms of the defense and the jury's decision in the case. It was also a heavily publicized trial.[3] Additionally, Jonathan L. Birge, a managing partner at Jackson's firm, declined to consent to an oral history, citing his close friendship with Jackson, saying that it would be "too painful to discuss" details of Jackson. Even thirty years after Jackson's death, he did not want to discuss the man's

[3] Stephen Goldschmidt, the District Attorney at the time, would normally represent the State in such cases. I believe he did not represent the State because he was preparing to run for Mayor of Indianapolis at the time and wanted to avoid the attention of this trial in case he were to lose it, or because of its subject matter.

personal, or even professional, life. He also declined to recommend any other potential interviewees that I could ask about what Jackson was like. This was a frustrating trend in my research. In my opinion, those still living declined to talk to me by citing personal reasons or feigning forgetfulness of all events surrounding the murder and trial.

For the third component of my project, I wanted to include a creative public history element. While other students have come up with exhibit designs, public programs, and other related public history projects, I felt that this story was very cinematic. I felt I could visualize much of the story in my head and wanted to write it as a screenplay. Historically-based but fictionalized movies, plays, musicals, and television programs are works of public history, educating the consumer or making them aware of an historical event, subject, or topic (whether accurately or inaccurately). A few well-known examples include the *John Adams* biographical mini-series starring Paul Giamatti, the musical *Hamilton* created by Lin-Manuel Miranda, and Ronald F. Maxwell's 1993 film *Gettysburg*.

Historical fiction obviously differs from documentaries, in that the fiction typically involves much more dramatization, editing choices of what not to include to further the plot or condense the timeline, and created dialogue and other factors for plot points or to keep the story moving in places where it is not known exactly what happened. Historical fictions are often praised, however, for costuming and set design. Documentaries, too, have biases in editing, who is interviewed, and how a story is presented. I did consider making a documentary for the project, but I felt it would be much more time consuming, and more difficult to pull together the pieces. I felt justified

in this decision when I was later rebuffed by living witnesses to the story and could not find others.

In my screenplay, I tried as much as I could to rely on the primary sources I had utilized in the history paper. The dialogue is close to 75% exact or slightly edited quotes that people actually said in media interviews, in court, or in writing. Another 10% is based on the known actions of the characters. The rest of the dialogue I fabricated. It is based on what I know of the real people through what others said about them or their personalities. There were quite a few reporters who covered the murder and trial for the two main Indianapolis newspapers, so I also condensed the real quotes and such into just two of the reporters, whom I have as main characters in the screenplay.

I chose to set the story as an ongoing discovery for the audience about what really happened. This is done in the first two acts by having the audience follow from the perspective of two newspaper reporters uncovering the facts of the case, and through flashbacks showcasing the actions of Herb Robbins (which I based from his testimony in court and from police reports). The third act is then a mixture of being present in court and more flashbacks, (hopefully) discovering – for the audience – Robbins' motivations. The end of the screenplay has title cards giving additional context to HIV/AIDS and the fear defense used by Robbins.

This synopsis and history paper will be stored with the graduate office alongside other papers from the history department. For the oral histories and screenplay, there will be links on the history department's ScholarWorks account.

Introduction

In 1988 Herb J. Robbins, a 17-year-old white male prostitute, murdered prominent white Indianapolis attorney Donald L. Jackson. Robbins then used a 'fear of AIDS' defense in court to escape murder charges. Robbins and Jackson likely identified as gay with Jackson being "closeted"— someone who has not publicly acknowledged their homosexuality.[4] This defense highlighted the discrimination faced by gay men and the heightened fear of acquired immunodeficiency syndrome (AIDS), then a little-understood disease. This story fits into larger discussions about AIDS and our cultural and governmental response to it. It is important to understand how we interact with each other, how governments act, and how we deal with epidemics as diseases or as cultural phenomena.

Hoosiers, like others around the country, connected HIV/AIDS and blood laws to gay men because gay men were the first people identified with AIDS – in 1981 and 1982 AIDS was known as GRID: gay-related immunodeficiency disease.[5] This connection in Indiana's human immunodeficiency virus (HIV) laws and the FDA's policy on HIV/AIDS only further stigmatized gay men and people living with HIV by associating them with criminal activity, including the criminalization of Donald Jackson when Herb Robbins testified that he killed Jackson for fear he could have gotten AIDS from him.

[4] As such, I use the term "gay" to describe the non-straight actors in this account and I use the term "straight" for non-queer actors in this account. See Stein, Marc. *Rethinking the Gay and Lesbian Movement*. New York, NY: Routledge, 2012. Pages 5-8.
[5] "History of HIV and AIDS Overview." *Avert*. Accessed 2019. https://www.avert.org/professionals/history-hiv-aids/overview.

For Indiana's population in the 1980s, a fear of Human Immunodeficiency Virus (HIV)/AIDS meant a fear of gay men, opening the door for discrimination in all facets of society – including in the courts – leading to the successful 'fear of AIDS' defense in 1988. That ingrained discrimination has had lasting effects on Indiana's residents and especially on its gay communities including, but not limited to the criminalization of persons with HIV.[6] Why was Indianapolis a place where this "fear of AIDS" defense could succeed? How does this defense reflect broader discrimination and stigmatization directed toward the gay community?

In 1985, many states, including Indiana, responded to HIV in the blood supply by closing blood banks and passing laws making it illegal for people with HIV and AIDS to donate.[7] The FDA, as well, banned gay or bisexual men from donating blood for fear they might have HIV/AIDS.[8] Indiana also passed a law requiring people with HIV to notify any potential sexual partner about their HIV positive status.[9] The laws criminalizing people living with HIV were created in direct response to a fear of AIDS in the blood

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[6] Peter Baldwin brought society and culture into focus in 2005 with *Disease and Democracy: The Industrialized World Faces AIDS*. Baldwin argues that AIDS obviously would have existed as a disease in the world, but it was only an epidemic because of the social structure of the world's governments and societies, and our social and cultural responses to the disease – now a widely accepted concept in sociology. See Baldwin, Peter. *Disease and Democracy: The Industrialized World Faces AIDS*. Berkeley: University of California Press, 2005.

[7] "Indiana." HIV Criminalization In the United States: A Sourcebook On State And Federal HIV Criminal Law And Practice. Page 3. Accessed 2018. http://www.hivlawandpolicy.org/sites/default/files/Indiana%20-%20Excerpt%20from%20CHLP%27s%20Sourcebook%20on%20HIV%20Criminalization%20in%20the%20U.S.pdf.

[8] Wells, Jesse. "FDA lifts lifetime ban on gay men donating blood." *Fox 59* (Indianapolis). Accessed 2018. https://fox59.com/2015/12/21/fda-lifts-lifetime-ban-on-gay-men-donating-blood/.

[9] "Indiana." HIV Criminalization In the United States: A Sourcebook On State And Federal HIV Criminal Law And Practice.

supply. Queer film studies scholar Sean P. Griffen wrote in *Tinker Belles and Evil Queens: The Walt Disney Company from the Inside Out* that the song sung by the mob in the film "Beauty and the Beast" was written as a metaphor for the response by the general public to people with AIDS. The mob sings "We don't like/What we don't understand/In fact it scares us/And this monster is mysterious at least" while on their way to kill the beast who "will make off with your children!"[10]

This fear was only amplified by Ryan White's infamous story. Ryan White was diagnosed with AIDS in 1985 and tried to continue going to school. Ryan had acquired HIV through a blood transfusion in a routine doctor's visit to replenish blood-clotting Factor VIII for his hemophilia, a clotting disorder. His peers at school and others called him a "faggot," once again equating homophobia with AIDS, doubly stigmatizing AIDS and heightening fears.[11] The protesting parents succeeded in getting the school board in Kokomo, Indiana to remove Ryan from school in July 1985. Ryan was allowed back in school in February 1986 after an appeal to the school board recommended as much. Some parents formed a group called Concerned Citizens and Parents of Children Attending Western School Corporation. They got the Howard County Circuit Court to issue a restraining order. Ryan missed another month of school before a higher court

[10] Griffin, Sean P. *Tinker Belles and Evil Queens: The Walt Disney Company from the Inside Out*. New York: New York University Press, 2000 and *Disney's Beauty and the Beast*. 1998. Film.
[11] Safiano, Allen. "Ryan White and Kokomo, Indiana." *Traces Magazine*. Vol. 25, No. 1. Winter 2013. Pages 13-25.

struck down the restraining order. He could attend school again, but many parents were afraid to send their children to school with him.[12]

This connection in Indiana's HIV laws and the FDA's policy on HIV/AIDS only further stigmatized gay men and people living with HIV by associating them with criminal activity, including the criminalization of Donald Jackson when Herb Robbins testified that he killed Jackson for fear he could have gotten AIDS from him.

Section One – A Lover's Quarrel

Walking in the park one day, Herb Robbins (17, unhoused) and Donald L. Jackson (49, lawyer) bumped into each other and started a conversation. Jackson was someone that Robbins could vent to about his troubled youth and about being gay. Robbins was someone Jackson, a closeted man who had sex with men (and boys), could feel free around. The pair met up again in May at a local Indianapolis hotel. Jackson paid Robbins twenty dollars to perform a "sex act."[13]

In their final meeting a month later, Robbins got into Jackson's car on North Meridian Street. Jackson then drove them to the Chariot House Motel located at 120 South Tibbs Avenue. The Chariot House was a pay-by-the-hour motel in one of Indianapolis' poorer neighborhoods, known to be a place for taboo business among gay men.[14] The pair entered around 7:15 p.m. Robbins waited while Jackson rented a room. Later that night, Jackson asked Robbins to have anal sex. Robbins said no.

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[12] Price, Nelson. *The Quiet Hero: A Life of Ryan White*. Indianapolis, IN: Indiana Historical Society Press, 2015. Pages 49-71 and "Parents avoid AIDS victim with new school." *UPI*, April 18, 1986.
[13] *State of Indiana v. Herb Robbins*, 549 N.E.2d 422 (Ind. Ct. App. Jan. 17, 1988): Transcript, Minutes and Verdicts, and Case Summary.
[14] *State v. Robbins*

During an escalating argument, Jackson reportedly said "I thought we were going to spend the rest of our lives together."[15] A fight ensued, ending with Robbins stabbing Jackson in the chest. Robbins grabbed Jackson's telephone card, wallet, and car keys. He exited the room, left the room key at the front desk, and headed out. Robbins then "drove around for several hours to clear his head."[16] He actually drove to Kentucky, then up to King's Island theme park in Ohio with a friend, using money from Jackson's wallet to pay for the trip.[17]

Jackson rented a room for $19 for three hours, using an illegible signature and fake social security number. When he was late turning in the key, the desk clerk called the room, with no answer. A few minutes later a young man, described to police as about 20 years old, returned the key and left. A maintenance employee checked the room and found Jackson's slumped body with one stab wound on the left side of his chest.[18] Jackson's 1986 Pontiac 6000 was missing. It was believed to have been taken by the killer: Robbins.[19]

Within the week, a private funeral was held for Jackson. His wife, his two sons, and other close friends and family looked on. His colleagues were dismayed by the thought of one of their peers in a casket.[20] Jackson was in the prime of his career. He

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[15] Miley, Scott L. "Teen admits he stabbed attorney." *The Indianapolis Star*, September 13, 1988: pages 1 and 5, section A and *State v. Robbins*

[16] Mark D. Allan and Kevin Morgan. "Teen tells police he killed attorney." *The Indianapolis Star*, July 4, 1988: page 1, section A and *State v. Robbins*.

[17] "Crying teen admits slaying, police say." *The Indianapolis News*, July 4, 1988: page 23.

[18]Allan, Mark D. "Motel murder victim a prominent attorney." *The Indianapolis Star*, July 2, 1988: pages 1 and 11, section A and *State v. Robbins*.

[19] Ibid.

[20]Ibid; *State v. Robbins*; and "Private services to be held for attorney Donald L. Jackson." *The Indianapolis Star*, July 3, 1988: page 6, Obituaries; section B.

had been indispensable in helping to build the RCA Dome and bring the Baltimore Colts football team to Indianapolis.[21] He had also been president of, and was serving as vice president of, the Indianapolis Bar Association.[22] "'It's a great tragedy,' said Jonathan L. Birge[23], a managing partner of [Jackson's] law firm. 'He was an outstanding lawyer and I'm deeply saddened for his family.'"[24]

On Saturday, July 2 an Indianapolis Police officer arrested Robbins near Monument Circle for prostitution unrelated to Jackson's murder. Robbins, in custody, tried to ditch two telephone credit cards between the seats of the cop car, one of which belonged to Donald L. Jackson. After transfer to the Marion County station, Robbins was booked for loitering with suspicion of prostitution and his fingerprints were taken in Indianapolis for the first time.[25] Earlier that morning, police had found Jackson's Pontiac in an alley off of North Harding Street and pulled fingerprints from the car, which matched Robbins'.[26]

[21] Morgan, Kevin. Interview by Dalton Gackle. Oral History. October 28, 2018.
[22] Harris II, Welton W. "Teen gets 25-year term." *The Indianapolis News*, September 30, 1988: page 8.
[23] Birge declined to consent to an oral history, citing his close friendship with Jackson, saying that it would be "too painful to discuss" details of Jackson. Even thirty years after Jackson's death, he did not want to discuss the man's personal, or even professional, life. He also declined to recommend any other potential interviewees that I could ask about what Jackson was like. This was a frustrating trend in my research. Most people directly connected to Jackson or involved in the trial are deceased. Those still living declined to talk to me, citing personal reasons or (in my opinion) feigning forgetfulness of all events surrounding the murder and trial.
[24] "Private services to be held for attorney Donald L. Jackson."
[25] Mark D. Allan and Kevin Morgan. "Police seize suspect in slaying of attorney." *The Indianapolis Star*, July 3, 1988: page 1, section A and *State v. Robbins*.
[26] Ibid.

Herb Robbins was an "uncontrollable" child and, especially, teenager.[27] Robbins' peers were not surprised about the situation he found himself in. "It sounds like something he would do because he's been in so much trouble in the past," said Tina Hughett, one of Robbins' high school friends. Robbins had been arrested for car theft before, and had even escaped from jail.[28] In 1987 Robbins became a ward of the Parke County Department of Welfare because his mother said she and Robbins' stepfather could not handle him. He was later transferred to the Park Circuit Court. That made county officials his legal guardians.[29]

As a minor upon his arrest, his legal guardians—the county— should have been notified and been present during his confession to the police. Instead, after Robbins was confronted with the fact that his fingerprints were all over Jackson's Pontiac, he gave confession in front of his mother and stepfather. The judge in *State v. Robbins* later threw out the police confession as evidence, since Robbins' guardians had not been present.[30] This meant that anything Robbins had said in the confession was inadmissible in court. It also meant that Robbins and his defense could come up with a new strategy to combat the other evidence against him in the murder. They would settle on self-

[27] Talucci, Edmond. Interview by Mark A. Lee. Oral History. August 17, 2014. From SC 3338. Edmond Talucci Oral History. Page 2. Indiana Historical Society.
[28] "Teen tells police he killed attorney."
[29] Miley, Scott L. "Slain attorney didn't have AIDS, pathologist testifies." *The Indianapolis Star*, September 10, 1988: page 2, section B and *State v. Robbins*.
[30] Ibid.

defense, even if what Robbins had admitted in the police confession did not match that.[31]

Meanwhile, details of Jackson's private life began to emerge. According to Chariot House Motel employees, Jackson was a frequent occupant. Records show that Jackson had visited the motel using the same name and social security number over the course of several months prior to his death. Most revealing however, was that Jackson's wife Lucinda "had suspected her husband's sexual involvement with men."[32] A prominent attorney coming out as gay and sexually active, posthumously nonetheless, was no small deal in 1988.[33] Jackson had even paid an Indianapolis dishwasher $20,000 to keep quiet about "provid[ing] Jackson with 20 to 30 male prostitutes…" between 1985 and 1987.[34]

One of the main issues with being "out" as gay in 1988 was the conservative religious belief in AIDS as a punishment from God. In *After the Wrath of God: AIDS,*

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[31] I do know what Robbins said in his police confession. The record of his confession exists as part of the transcript. Unfortunately, the City County Building in Indianapolis pitched all of their pre-2000 police records (for closed cases), so the original copy and all other evidence (which is not readable/viewable in the court transcript) is gone.

[32] "Police seize suspect in slaying of attorney."

[33] It would be nearly another 10 years before Ellen DeGeneres would come out, both on her television sitcom, "Ellen," and in real life, for which she and the cable network ABC received heavy backlash from conservative Americans. I use this example not to compare the reach or celebrity of Degeneres and Jackson, but to show that coming out as gay, even in Jackson's more limited social and professional circles, likely would not have been accepted by people in those circles.
"Ellen Comes Out: "The Puppy Episode" Aired 15 Years Ago." Emmy TV Legends Blog. April 30, 2012. Accessed 2018.
http://www.emmytvlegends.org/blog/?p=5903
and Foley, Bridget. "Ellen." *W Magazine*. March 2007. Accessed 2018.
http://www.wmagazine.com/celebrities/2007/03/ellen_degeneres.

[34] Harris II, Welton W. "Victim paid $20,000 blackmail to hide sex acts, jury hears." *The Indianapolis News*, September 9, 1988: pages 1 and 5, section A and *State v. Robbins*.

Sexuality, and American Religion (2015), Anthony Petro shows how AIDS forced religious institutions to grapple with health and sexuality in their communities from 1980 to the present.[35] Jonathan Engel wrote that "fear of AIDS spreading into the general population provoked a torrent of animosity toward gays. While homosexuality had never been broadly accepted in the general population, AIDS seemed to galvanize many people's disdain for homosexual practices, and for homosexuals in general." He goes on to talk about religious leaders having to walk a line between condemning practices that lead to transmitting HIV and expressing sympathy for people diagnosed with HIV or dying from complications from AIDS. In actuality, preachers across the nation told their congregations that homosexuality was a sin and that AIDS was retribution for partaking in gay activities or "lifestyle."[36]

Many Hoosiers were especially harsh toward persons diagnosed with HIV/AIDS. One preacher's son from Goshen, named Bill, wrote his parents a coming-out letter in which he discussed the oppression of small-town Indiana and its focus on religion as justification for discrimination of a gay lifestyle. He compared several Indiana towns' attitudes toward homosexuality to San Diego's and San Francisco's inviting relationship between churches and gay people.[37] *You Can Do Something about AIDS*, an informative

[35] Petro, Anthony M. *After the Wrath of God: AIDS, Sexuality, and American Religion*. New York: Oxford University Press, 2015.
[36] Engel, Jonathan. *The Epidemic: A Global History of AIDS*. New York: Smithsonian Books/ HarperCollins, 2006. Pages 44-46 and 69-70.
[37] Letter from Bill to parents. October 15, 1985. From the Gerry Tyrrell Papers. Box 1, folder 1. Indiana Historical Society.
As Bill is from Indiana, he had only the insight to speak about the towns he and his parents were familiar with to compare to his experiences in California. A more comprehensive study might determine where Indiana stands compared to other states and their towns in terms of being more or less welcoming to people coming out.

book published in 1988 on interacting with and caring for people with AIDS, has a chapter devoted to what preachers can do. The preacher who authored the chapter wrote to other religious leaders that "your people trust you. If you speak authentically from a profound prayer life and the experience of the world of AIDS, you will be able to allay their fears and raise them up to that perfect love which St. John tells us casts out all immobilizing fear."[38] In Indiana, however, some preachers were more concerned with mobilizing fear. Greg Dixon, the pastor of the Indianapolis Baptist Temple, and Donald Boys, an Evangelist Christian columnist for *USA Today* and an Indiana legislator wrote a book titled *The Truth about AIDS* in 1987. The book amounts to a collection of conspiracy theories, misinformation, and deliberate fear tactics. The two men spread lies: gay people controlled the media and deliberately withheld information on AIDS, hoping it will spread to the rest of the population[39]; mosquitos could spread AIDS; [40] AIDS was the beginning of the apocalypse as noted in the "Exodus" chapter of the *Holy Bible*;[41] AIDS was 100% fatal and no one ever recovered. By 1987, some people had successfully used the drug AZT to keep alive.[42] These men were supposed to be religious leaders in Indianapolis and Indiana, yet they were purposely building up fear of AIDS in the state and in Indianapolis – a fear, or claim of, that would be instrumental in Jackson's murder.

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[38] Alyson, Sasha. *You Can Do Something about AIDS*. Stop AIDS Project, Incorporated, 1988. Page 84.
[39] Dixon, Greg and Donald Boys. *The Truth About AIDS*. 1987. Page 4. From M1393. Indianapolis Baptist Temple and Dr. Greg J. Dixon Materials. Box 1, folder 14. Indianapolis Historical Society.
[40] Ibid and "History of HIV and AIDS Overview."
[41] *The Truth About AIDS*.
[42] Ibid and "History of HIV and AIDS Overview."

In her 2016 Ph.D. dissertation, "Christian, Philadelphian, and Gay-Affirming Responses to AIDS, 1982-1992," Whitney Cox looked at the ways religious institutions used their messages and scripture to challenge the notion that AIDS was God's punishment on sinners.[43] One religiously funded group in Indianapolis was trying to combat fear and help people living with AIDS. The Damien Center, run by the Catholic and Episcopalian Churches in partnership with the Indianapolis Bag Ladies, opened in June 1987 providing HIV testing, counseling services for people living with HIV and AIDS, and education to patrons.[44] *The New Works News*, a gay newspaper in Indianapolis, noted that "there is a great and growing need in the community for a facility such as the Damien Center, and after some initial stumbling they now appear to be well on the way to meeting that need." [45] The "stumbling" was caused by having to immediately serve a significant population of persons with AIDS and the stigma attached AIDS by Indianapolis residents, including volunteers for the organization. The Damien Center helped persons with AIDS find somewhere comfortable to spend the last months of their lives. Harold Brown, who worked with the Damien Center, found a complex to live in with his partner as his partner withered away. He felt that other residents thought he was just trying to scam his partner for money, since Brown was black and his partner

[43] Cox, Whitney. "Christian, Philadelphian, and Gay-Affirming Responses to AIDS, 1982-1992." Ph.D. Dissertation, Temple University, 2016.

[44] The Indianapolis Bag Ladies are an organization dedicated to HIV/AIDS education and care of persons with AIDS.
Chinn, Kara Elizabeth. "Drag Against AIDS: AIDS and the Indianapolis Bag Ladies, 1981- 1995." Indiana University-Purdue University Indianapolis (IUPUI), April 2020.

[45] "The Damien Center – An Update." *New Works News* copy. From M1242. Michael Bohr Chris Gonzales Collection. Box 12, folder 5. Indianapolis Historical Society.

was white. But he cared for his partner and others through the Damien center. He even spent time with a dying priest, Howard Warren, who had AIDS. Brown mentioned that "even he, as a priest could not find a nursing home who would care for him with HIV/AIDS, and he was a beacon in this city."[46] Fear of the disease kept care away from one of the few religious leaders who was trying to care for others with HIV/AIDS and opened up a line of defense for Robbin's murder of Jackson, thanks in part to the fear-spreading of religious figures like Dixon.

Section Two – Pre-trial Context

The *Indianapolis Star* began their extensive coverage of the crime, subsequent trial, and aftermath on July 2, 1988 with a story on the front page. The story would remain on the front page of the paper (section A) or the front page of the city/state coverage (section B) in nearly twenty articles between July 1988 and December 1988. These covered the murder, two trials, and a civil lawsuit. The *Kokomo Tribune*, a paper for the Kokomo, Indiana area (about 48 miles north of Indianapolis) also published three articles in that time frame. This would make the *Robbins* case both high-profile and highly publicized.[47] The *Indianapolis Star* would frequently use variations of the word "slain" when describing Jackson's death, especially in headlines, until the trial was over. Slain presumes guilt of a vicious murder by the accused killer. Choosing to use slain repeatedly suggests that the *Indy Star* knew the positionality of the word, perhaps due to their personal thoughts on male prostitutes.

[46] Brown, Harold. Interview by Mark A. Lee. Oral History. November 29, 2014. From SC3335. Harold Brown Oral History. Page 41. Indiana Historical Society.
[47] Morgan, Kevin. Interview by Dalton Gackle.

The New Works News, a monthly gay Indianapolis newspaper, began their coverage of the crime, subsequent trial, and aftermath in their August 1988 issue with a large front-page story. Follow-up coverage included one half-page story on the trial and 'Defense against AIDS,' a letter to the editor and a small news story on a second trial related to the case between August 1988 and November 1988. This points to the case being important for at least part of Indianapolis' gay community at that time.

Day two of the trial revealed that Jackson was being blackmailed before his murder. Paul Parsons, already indicted and in jail for the crime, had been extorting Jackson. Police believed Parsons had the name of a homosexual prostitute that Jackson had sex with. As mentioned before, Jackson would not have wanted that information out. Parsons would later testify that he witnessed Jackson doing different sexual acts with underaged prostitutes, and that his behavior was "sexually violent."[48] Jackson's actions constitute ephebophilia, which is attraction to adolescents, as opposed to pre-pubescents (pedophilia). Performing or partaking in sex work (whether it be giving or receiving) is also highly stigmatized, both historically and continuing today. Jackson's ephebophilia likely worked against the State's case, while the stigma of prostitution likely worked against Robbins' case, as the stigma is usually greater for those providing the service.[49]

[48] "Slain attorney didn't have AIDS, pathologist testifies." and *State v. Robbins*.
[49] The Samuel Centre for Social Connectedness. "The Stigmatization Behind Sex Work," May 4, 2018. Accessed 2023. https://www.socialconnectedness.org/the-stigmatization-behind-sex-work/.

There were two victims in this case. Jackson was killed. But Robbins was also a victim. As a minor, he was not responsible for his own care, or the position he was in as a prostitute. Had this case been about convicting Jackson of solicitation and sexual abuse of a minor, Jackson would have likely been convicted, with Robbins possibly not facing any charges for prostitution due to his age.

Section Three – Setting A Trial

On Wednesday, September 1, Christopher Zoeller, Robbins' state-appointed attorney, questioned the potential juror seated in front of him. Other prospective jurors were seated behind.[50] Questions like "where do you work?," "how do you feel about the latest film?," subtle questions to reveal biases and personality traits, abound during juror selections. Jury selection is often where a case is won or lost.[51] Then Zoeller asked how the juror felt about AIDS. This would be the definitive question that defined the jury pool. Before the juror could answer, prosecuting attorney Barbara Trathen[52] "irately

[50] Gelarden, Joseph. "Sexual history rejected as evidence in trial for attorney's slaying." *The Indianapolis Star*, September 1, 1988: page 1, section B and *State v. Robbins*.

[51] Rogers Law Firm Texas. "Voir Dire: Picking a Jury May Win or Lose Your Lawsuit." *Hg.org*. Legal Resources. Accessed 2019.
https://www.hg.org/article.asp?id=27428
and Eglet, Roger. "Why Jury Selection is Crucial to Winning a Case." *Jury Analyst*. February 4, 2017. Accessed 2019.
https://juryanalyst.com/jury-selection-strategy-crucial-to-case/.

[52] Trathen declined to be interviewed for an oral history. From the few questions I was able to ask her over the phone, Trathen denied ever having known Jackson. She also told me she didn't remember who he was, who Zoeller was, or anything about this case. This is interesting considering it was such a significant case in terms of the prominence of Jackson, especially among other lawyers, and in terms of the defense and jury's decision in the case. It was also a heavily publicized trial. Stephen Goldschmidt, the District Attorney at the time, would normally represent the State in such cases. I believe he did not represent the State because he was preparing to run for Mayor of Indianapolis at the time and wanted to avoid the attention of this trial in case he were to lose it, or because of its subject matter.

objected." Zoeller fired back at Trathen, the two becoming heated. Judge John W. Tranberg ordered the prospective jurors to leave the room. He needed a word with the attorneys.[53]

"The defendant will testify that he defended himself using deadly force because he was afraid he might catch AIDS from the sexual acts proposed by Jackson," Zoeller argued. "But what evidence of this do you have?," Trathen wondered aloud. Tranberg ruled that Donald L. Jackson's sexual history would not be admissible evidence in court.[54] He later reversed that decision, after Zoeller laid a foundation that necessitated testimony on Jackson's sexual exploits. During a recess Zoeller approached Herb Robbins' mother, telling her that the prosecution was "going to try and railroad" her son because Jackson had been friends with Trathen.[55]

It was a smart move for Zoeller to argue for a self-defense that played on people's fears of AIDS, especially in a case involving homosexuality.[56] Homophobia in Indianapolis was prevalent.[57] Pairing that phobia with a deadly disease only amplified fear. Planned Parenthood of Central Indiana statistics showed that over 50,000 cases of AIDS had been diagnosed nationwide between 1982 and 1988, and over half of those

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[53] "Sexual history rejected as evidence in trial for attorney's slaying." and *State v. Robbins*.
[54] Ibid.
[55] Hess, Skip. "Murder trial opens with loud shouts." *The Indianapolis News*, September 1, 1988: page 2.
[56] See Behrman, Greg. *The Invisible People: How the U.S. Has Slept through the Global AIDS Pandemic, the Greatest Humanitarian Catastrophe of Our Time*. New York: Free Press, 2004; Brier, Jennifer. *Infectious Ideas: U.S. Political Response to the AIDS Crisis*. Chapel Hill, NC: University of North Carolina Press, 2009; and Stockdill, Brett C. *Activism against AIDS: At the Intersection of Sexuality, Race, Gender, and Class*. Boulder, CO: Lynne Rienner Publishers, Inc., 2003.
[57] Opsahl, Samuel Evan. "Circle City Strife: Gay and Lesbian Activism during the Hudnut Era." Indiana University-Purdue University Indianapolis (IUPUI), March 2020.

people had died. Of those 50,000, 66% were said to be homosexual or bisexual men. In Indiana, 284 people had been diagnosed with AIDS and 170 of them had died. Marion County saw 98 people diagnosed. Fifty-two had died. An AIDS timeline from the Indianapolis Bag Ladies, an organization dedicated to HIV/AIDS education and care of persons with AIDS, showed five hundred fifty-nine confirmed cases of AIDS reported in Indiana by 1988. A map of HIV/AIDS cases in Indiana from the Indiana State Department of Health Division of HIV/STD published in 1994 showed over 3,300 cases of AIDS in Indiana between 1982 and 1994. Three organizations had wildly different numbers possibly because many cases of AIDS were underreported, not reported because of stigma (especially by families after death of a loved one), or reported to one organization but not another. State Department of Health also likely used statistics to project their total number of cases based on actual reported cases.[58]

Leadership in Indianapolis had a complex, often homophobic, relationship with gay activists in the city. Interactions with the police were often violent, sometimes because of the stigmatized connection of gay men and HIV/AIDS.[59] William Hudnut III, often referred to as "Mayor Bill," served as Indy's longest serving mayor from 1976 to

[58] Brown, Harold. Interview by Mark A. Lee; Memorandum from Norma Clavenger and Jodi Magee to Affiliate Executive Directors and State Public Affairs Contacts. Planned Parenthood, February 5, 1988. From M1181. Steven L. Tuchman Papers. Box 40, folder 17. Indiana Historical Society; Bag Ladies Documents, 2006-10 and not dated: AIDS Timeline. From M1157. Box 3, Folder 12, Mark A. Lee LGBT Collection, Indiana Historical Society; and AIDS and HIV Cases by County of Residence at Diagnosis map. From Indiana AIDS Fund, ed. *The Picture: A needs assessment and overview of the Indiana HIV/AIDS arena*. Indianapolis: Indiana State Department of Health, 1996.

[59] "Police abuse of gays on Circle on the rise – one man's story." *The Works* (Indianapolis), August 1984 and Patterson, James L. "Witnesses say arrest was too rough: suspect's wife, neighbor claim handcuffed man beaten." *The Indianapolis Star*, October 20, 1991.

1992. He was in office during the conservative religious backlash against homosexuality and from the beginning of the AIDS crisis. Hudnut was himself a Christian and a pastor, although he admitted that he was not always in agreeance with his party's views and actions, including on gay and lesbian rights and AIDS.[60]

On January 10, 1983, officials from the Mayor's Office and the Indianapolis Police Department sat down with members of the Indianapolis Gay/Lesbian Coalition (IGLC) after the IGLC had requested a meeting to discuss police action – including violence and harassment – against gays and lesbians in the city. The Mayor's Office sent Public Safety Director Richard Blankenbaker, a mayoral aide, and a city attorney, while the IPD sent Deputy Chief Bob Ward and three others. Hudnut and Police Chief Joseph McAtee did not attend. IGLC leaders provided a list of seven recommendations to Hudnut's administration relating to how they might handle problems for gays and lesbians in Indianapolis.[61] Blankenbaker agreed to review these recommendations, saying "what we are trying to do here is sit down and find common ground and ways that we can work together in solving our problems." The city group also expressed interest in understanding discrimination of Indianapolis' gay and lesbian citizens.[62] The IGLC members thought the meeting was a positive interaction.[63] Meeting with Hudnut, however, proved to be disappointing.

[60] Opsahl.
[61] "IGLC meets with city officials." *The Works* (Indianapolis), February 1983; and Opsahl.
[62] Ibid.
[63] Ibid.

On October 3, 1983, Mayor Hudnut finally met with six members of the IGLC in person to discuss issues for gays and lesbians in Indianapolis, including discrimination.[64] In the meeting Hudnut confirmed that he viewed gays and lesbians as a minority and "'admitted that he had "never focused on the issue [of them] before.'"[65] Hudnut expressed that he was willing to have an open door for ongoing conversations with himself and the gay and lesbian communities in Indy. He also mentioned possibly amending an Executive Order on city-county employment discrimination to include a line about sexual orientation.[66] However, an article in *The Works* (a gay-oriented predecessor to *The New Works News*) noted Hudnut's "obvious discomfort" at being in public with gay and lesbian citizens. He turned down multiple invitations to gay and lesbian events and denied a photo opportunity at the end of the meeting.[67] While Hudnut was not outright rejecting and discriminating against them, Indianapolis' gays and lesbians could not count on him to be an ally in their fight against violence and discrimination, including in the courts.

Section Four – Murder in the Context of Homophobia and Violence

The New Works News wrote that "AIDS … prompts recriminations and fear because of its perceived connection with sexuality and homosexuality and because a full understanding, much less a cure, for AIDS has thus escaped" us.[68] Philosopher Greg

[64] "Hudnut meets with gay activists." *The Works* (Indianapolis), November 1983 and Opsahl.
[65] Ibid.
[66] Ibid.
[67] Ibid.
[68] "Unlearning Homophobia." 1988. *The New Works News* (Indianapolis) copy. From M1242. Michael Bohr and Chris Gonzales Collection. Box 12, folder 6. Indiana Historical Society and

Behrman noted that "while the gay label would fall, the misperception and stigma in which it was conceived would linger – a distorted prism through which wide swaths of Americans would perceive the disease through its flight."[69] Diane Brashear, President of the Board of Directors of Planned Parenthood of Central Indiana wrote in their CHOICES publication in the spring of 1987 that "sexual behavior has been protected and viewed as confidential because it has always been thought to be a private behavior. AIDS, and its deathly implications, now makes sexual behavior a public issue."[70] That was fine for Herb Robbin's attorney Christopher Zoeller, who would use this "public issue" to his advantage to make his client the victim in the murder.

The murder and trial took place, as historian Bradford Martin posits, at the end of one of the most politically, socially, religiously, and economically conservative decades in United States history.[71] It also took place as AIDS spread and deaths from the disease rose to epidemic proportions.[72] Historians, such as Elizabeth Fee, Nancy Krieger, and Peter Conrad argue that renewed political and religious conservatism grew out of

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Alyson, Sasha. 1988. *You Can Do Something about AIDS*. Stop AIDS Project, Incorporated. Page 14.

[69] Behrman, page 6.

[70] "AIDS: #1 Health Concern." *CHOICES*, Planned Parenthood of Central Indiana, Spring 1987. From M0468. Planned Parenthood of Central Indiana. Box 14, folder 5 "*CHOICES* 1987-1988." Indiana Historical Society.

[71] Martin, Bradford. *The Other Eighties: A Secret History of America in the Age of Reagan*. New York: Hill and Wang, 2011. See also Brier.
Martin argues that there were many individuals and groups in the 1980s who did not align or agree with Reagan-style politics, but he concedes that conservatism was the dominant ideology, noting that "the Democratic Party opened the decade reeling, its traditional constituencies ravaged by the emergent phenomenon of Reagan Democrats, and finished the decade enmeshed in the headlong pursuit of regaining the political center by moving farther to the right,"(xi).

[72] Engel.

the spread of AIDS – especially among gay men – using the disease as proof that the sexual revolution and gay rights movements of the 1970s were wrong/immoral.[73]

Historian Timothy Stewart-Winter laid out police harassment of LGBT persons and the criminalization of LGBT people and persons with HIV/AIDS in urban settings in his 2017 article "Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States." He focused on the late-sixties through the 1970s but his research applies to the 1980s, especially in Indianapolis.[74] Indianapolis had a problem of violence against homosexual men. Between the police brutality for which the IGLC was meeting with IPD and Hudnut and assaults from homophobic residents of Indianapolis, gay men in Indianapolis had reason to fear being out at night.

On July 6, 1984 David Molden, an openly gay nineteen-year-old, experienced police brutality on Monument Circle On his way home from a late night of work. David Molden was one of many gay men to experience harassment and violence from Indianapolis police in 1984. At least twenty-three allegations of harassment were filed with the Indiana Civil Liberties Union (ICLU) and *The Works* (Indianapolis) newspaper. Three allegations of harassment and brutality were logged with IPD Internal Affairs, including Molden's.[75]

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[73] Fee, Elizabeth and Nancy Krieger. "Understanding AIDS: Historical Interpretations and the Limits of Biomedical Individualism." *American Journal of Public Health* 83, no. 10 (1993): 1477-1486 and Conrad, Peter. "The Social Meaning of AIDS." *Social Policy* 17, no. 1 (October 1986): 51-56.

[74] Stewart-Winter, Timothy. "Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States." *Journal of Urban History* 41, no. 5 (2015): 825-835.

[75] "Police abuse of gays on Circle on the rise – one man's story" and Opsahl.

Officer S. Moore of the Indianapolis Police Department stopped Molden on Monument Circle and asked for identification to run a scan. Molden handed Moore his Body Works (a gay club) membership card and the fake ID he used to get into gay bars. Several more officers arrived on scene in marked and unmarked cars. An Officer Gruner then inspected the Body Works card, questioning Molden about the connections between Body Works and Molden's presence on the Circle – insinuating prostitution. Molden replied, "I don't see what going to Body Works has anything to do with being on the Circle." Gruner then grabbed Molden by the shirt and called him "a mouthy little son of a bitch." Molden claimed that Gruner

> proceeded to strike me two times in the face so hard that it brought tears to my eyes. Then he proceeded to choke me with both hands; I couldn't talk or breathe. I tried to scream but nothing came out. I believe one of the other officers pulled Officer Gruner off me; everything went black for a few seconds.[76]

Moore shoved Molden into a police car while Gruner tried to approach again, taunting "Why don't you let the little son of a bitch back out here so I can have another go at him." When Moore was asked about Gruner's assault of Molden, he said "I didn't see anything."[77]

An officer doing Molden's paperwork at the police station asked him, "Are you a fucking queer?" Another officer called Molden a "faggot." Officers walked him past a "rowdy" cell with one officer saying that he "ought to throw you in there and let them

[76] Ibid.
[77] Ibid.

fuck your faggot ass to death." The police released Molden the next morning with no charges filed.[78]

This is the context Donald Jackson and Herb Robbins were operating in when Jackson picked up Robbins from the Circle. It was not just a casual encounter; there was a lot of risk involved in hanging around Monument Circle. Once a place in Indianapolis where prostitution was a legal practice, it held on to a reputation of being a place to find sex workers through the 1980s.[79]

Between April and November of 1987, Indianapolis gay bars were targeted for a series of robberies and attempted robberies.[80] One bartender was even shot in the leg during a robbery at the Unicorn in which the robbers specifically asked for an envelope containing money raised for the Buddy House, an organization to help care for persons with AIDS. The robbers escaped with the envelope containing $641 after forcing everyone inside into the bar's basement and locking the door. The patrons kicked the basement door down soon after the robbers left and called the police.[81] The robbers were not only targeting gay bars, but people with HIV/AIDS as well. By targeting HIV/AIDS funds the robbers were making AIDS and the fear of the death it brings to the center of their attack, just as Herb Robbins and his lawyer would use AIDS as the center of their attack on deceased Donald Jackson and the fear Robbins reportedly had from he and Jackson's encounter.

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[78] Ibid.
[79] *State v. Robbins.*
[80] "Police need help identifying suspects." *The New Works News* (Indianapolis), November 1987.
[81] "Unicorn bartender shot during robbery: AIDS money stolen." *The New Works News* (Indianapolis), November 1987.

On September 30, 1990 the *Indianapolis Star* issued a report that violent crimes against gay men near Indianapolis gay bars was common; criminals believed gay men to be easy targets. Gay men were then afraid to reveal where they were robbed or assaulted for fear of discrimination and stigma from police and others. Some were murdered. The *Indy Star* reported that up to 30 percent of cases went unreported, a high number considering there were already 463 reported cases from between January and September 1990 alone (a majority outside the bar Our Place – it is possible the criminals targeted this publicly recognized queer site, which hosted Drag Night and other events).[82] By March 1992, many gay men and women in Indianapolis were asking Indianapolis police to "heighten protection" after another gay man was murdered because of his sexuality by a straight man.[83]

The police were also still an issue. One man who had AIDS was severely beaten upon his arrest for loitering at his estranged wife's home. When the police handcuffed him, he told them he was HIV-positive. They then mercilessly beat him until "he lost control of his bowels," according to his wife. The police wrote in the report that the man had resisted arrest and spit at them to try and infect them with AIDS. His wife reported that "he was not fighting back at all."[84] While this man was not necessarily gay (it is not clear why he and his wife were estranged), he had HIV, which the police were obviously

[82] Niederpruem, Kyle. "Gay bar patrons often crime targets: many victims hesitate to speak up." *The Indianapolis Star*, September 30, 1990: pages 1 and 4.
[83] Patterson, Jr., James L. "Gays tell IPD to heighten protection." *The Indianapolis Star*, March 18, 1992.
[84] Patterson, James L. "Witnesses say arrest was too rough: suspect's wife, neighbor claim handcuffed man beaten." *The Indianapolis Star*, October 20, 1991.

still discriminating against, likely from its earlier associations as a gay disease. This was after Herb Robbins used his fear of AIDS defense in court, showing that fear was still a motivating factor in discriminating against people with HIV/AIDS.

Section Five – A Dangerous Precedent

The trial began on Wednesday, September 7, 1988. Both sides made their opening statements. "'Robbins went to the motel intending to rob Jackson, 'but it didn't work without violence,"' Trathen said in her opening statement for the prosecution. Trathen was billing Robbins as selfish, violent, and criminal. "You will agree that Mr. Jackson is responsible for his own death," Zoeller said to the jurors, rebutting Trathen; "'Jackson was a 'Jekyll and Hyde' character, 'promising things in return for perverted sexual conduct by a minor.'" Zoeller was setting up Jackson as a pervert preying on a child, something that many in the "religious right" pushed to their congregations in regard to gay men. The rest of the day the jurors heard witness testimony from detectives on the case and motel employees. Robbins was quiet, reading *You Can Do Something About AIDS* between testimonies.[85] His testimony – his words – would wait until the next week.

However, what he did not say spoke just as loud; rather, his reading a book about AIDS visible to jurors did the speaking. Robbins reading a book about AIDS reminded jurors about his self-defense argument. Ironically, the book discusses fear as a response to AIDS, and the need to avoid that response. The introduction notes that "the

[85] Miley, Scott L. "Trial begins in slaying of prominent city attorney." *The Indianapolis Star*, September 8, 1988: page 1, section B and *State v. Robbins*.

costs of the epidemic of fear are immeasurable" including "the destruction of sane and rational behavior." Chapter one reads:

> fear, anger, and the urge to blame – these are among our most common responses to AIDS. Some of our most instinctive attitudes about the disease are negative ones; if we don't admit that and work to understand why it is so, such attitudes can control our decisions in very destructive ways. [86]

Zoeller and Robbins were acknowledging that fear is a common response, but not that it is a negative reaction to a person with AIDS. They were ignoring that the urge to blame is a negative reaction. They were blaming Jackson for bringing about his own death. They were not calming people's fear of AIDS, as the book suggests; rather, they were intentionally inciting fear to get a killer off murder charges.[87]

Day three revealed that the medical examiner tested Jackson's body for AIDS, in regard to "the circumstances under which the deceased was found and the history that [the examiner] had of the events around his death." While the results came back negative, it is important to note that it was deemed relevant to the autopsy to test for AIDS. "Robbins' fear of AIDS" would be "a crucial point" of his testimony the next week. [88]

Robbins' supposed fear could certainly be believable. Edmond Talucci, a gay man who worked in the Indiana State Department of Health when AIDS came to Indianapolis expressed in an oral history that "people were widely afraid," in Indianapolis in the late 1980s. Talucci also related that he ran a business clearing out possessions of people who

[86] *You Can Do Something about AIDS*, page 14.
[87] "Slain attorney didn't have AIDS, pathologist testifies" and *State v. Robbins*.
[88] Ibid.

had died from complications with AIDS, saying "people would call us to clean out apartments, the landlords weren't going to go into an apartment if the person had AIDS" because it "was so feared and despised."[89] Rosemary Igney, a public health worker at Medicaid in Indianapolis said that when getting medicine and care to patients, especially gay men, "we had to really work carefully, because there was so much fear and hatred and prejudice against anybody who had HIV and AIDS." Igney attributes much of the fear to stigma against a gay lifestyle and to misinformation. Secretaries at her office were afraid to open letters for fear of AIDS on a licked envelope.[90]

Finally, Robbins testified on his own behalf. He spoke about how he agreed to perform a sexual act for Jackson for $20.[91] But then Jackson asked to have anal intercourse with Robbins, who refused. During an escalating argument Jackson reportedly said, "I thought we were going to spend the rest of our lives together."[92] At the time, Robbins' right leg was strapped to a bed post. His left leg, however, held a sheath with a butcher knife. Jackson advanced as Robbins wielded his weapon. The next thing Robbins knew, Jackson lay on the bed bleeding out, and he was safe. . . safe from AIDS he told the jury. Robbins explained that he had been afraid that the anal intercourse would lead to the transfer of the disease. After all, Jackson was known to solicit prostitutes. Who knew if he had the disease? Everyone in the court room knew

[89] Talucci, Edmond. Interview by Mark A. Lee.
[90] Igney, Rosemary. Interview by Mark A. Lee. Oral History. Home of Rosemary Igney, February 3, 2015. From SC 3325. Rosemary Igney Oral History. Page 16. Indiana Historical Society.
[91] "Teen admits he stabbed attorney" and *State v. Robbins*.
[92] Ibid.

from the autopsy that he did not. But the murder had been in self-defense, Robbins testified.[93]

According to his family and neighbors, none of whom testified, anything Robbins said needed to be taken with a grain of salt. One neighbor told *Indianapolis News* reporter Greg Hassel that "if Herbie told you the sun was shining, you had better go outside and look for yourself before you believe him," adding "he could be very convincing. He knew how to tell a lie." Hassel also spoke to Robbins' childhood pastor, with the pastor noting that Robbins was "quite a con man." Robbins' stepfather tried beating or "whipping" him to alter his behavior. He told Hassel that Robbins "lied constantly" and that "nothing I could do would help." Robbins did not feel compassion from his family: Hassel noted that neighbors often commented that Robbins "did not have a happy home life," the beatings and scolding only making him more restless.[94] Robbins was clearly a victim of child and domestic abuse, but nonetheless, Robbins had lied often in the past, especially about crimes of theft he had committed. Now he was facing much heavier charges. Why not lie once again? That was the prosecution's stance throughout the trial, as they tried to prove Robbins' motivation for the murder was not self-defense, but a pre-meditated killing to acquire a car.[95] Christopher Zoeller was emphatic in his closing remarks, saying Jackson "should have known better" and that he

[93] Ibid.
[94] Hassel, Greg. "Lawyer's alleged killer was always in trouble." *The Indianapolis News*, July 6, 1988: pages 1 and 4, section A.
[95] *State v. Robbins*

"got what he deserved" for soliciting male prostitutes.[96] Prosecuting attorney Barbara Trathen expressed in her closing statement that "AIDS becomes a scare word, a powerful diversion, a smokescreen from the reality of what [Robbins] did. Whatever you think of Jackson's actions [remember, he was soliciting minors], he was a human being with a right to life."[97]

On Tuesday, September 13, 1988, the jury found Herb Robbins not guilty of one count of murder in the first degree and one count of murder in the second degree. The defense of "fear of AIDS" had been successful. While Robbins might have gotten away with murder, he did not escape jail time. Robbins received a 25-year sentence for robbery and a two-year sentence for auto theft to be served simultaneously. He could be eligible for parole in less than 13 years.[98]

In an editor's note about the trial and murder, *The New Works News* asked "Does a fear of AIDS now give anyone the right to murder? . . . Is this a travesty of justice? [We] think so."[99] In a letter to the editor that was sent to the *Indy Star*, rejected, then published in *The New Works News*, a *Gay TV* representative sent a 'PSA' to gay prostitutes, letting them know "there is now an easy way to pick up extra cash – murder your customers. … All that is needed is the standard excuse that 'I thought I might get

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[96] Killer Found Not Guilty: Fear of AIDS Defense Successfully Used." *The New Works News* (Indianapolis), October 1988: page 5; Scott L. Miley and Kevin Morgan. "Male prostitute found not guilty in attorney's death." *The Indianapolis Star*, September 14, 1988: pages 1 and 7, section A; and *State v. Robbins*.

[97] "Male prostitute found not guilty in attorney's death" and "Killer Found Not Guilty: Fear of AIDS Defense Successfully Used."

[98] Smulevitz, Howard M. "Youth gets 25 years for robbery in Jackson case." *The Indianapolis Star*, September 30, 1988: page 1, section C and *State v. Robbins*.

[99] "Killer Found Not Guilty: Fear of AIDS Defense Successfully Used."

AIDS.'" The association of being gay with AIDS only added to fear of the disease, especially among gay men. One gay ally said that "at the beginning of the AIDS crisis, people weren't admitting that they were gay, often because they would lose a job, they would lose friends, their families would disown them … just because of who they were."[100] And just because other people were afraid of AIDS, which they associated with all gay people. Beyond job security and home life, one man was now murdered for the fear of AIDS.

Jurors felt that Robbins should have at least been charged with manslaughter. But the charges were for murder, not manslaughter. And the jurors were not confident that Robbins murdered Jackson according to the rule of law. Indiana law required that jurors be convinced 'beyond a reasonable doubt' that a crime took place in order to convict. First degree murder charges required a planned murder, while second degree murder required that the murder was intentional, although without premeditation. "The issue was there was reasonable doubt in our minds that Herb Robbins knowingly or intentionally went in to kill Donald Jackson," one of the jurors related after the trial. He added that "None of us wanted to come back with an innocent verdict… but we felt like there was no other alternative."[101]

As for the manslaughter question, Zoeller did not want a trial. He and Robbins would have settled that the charges would be manslaughter without a deadly weapon. Trathen wanted manslaughter with a deadly weapon. The difference? About 30 years in

[100] Igney, Rosemary. Interview by Mark A. Lee. Page 30.
[101] Miley, Scott L. "Victim's lifestyle didn't influence verdict, juror says." *The Indianapolis Star*, September 15, 1988: page 1, section B.

prison. Since they could not agree, the case would go to trial, where Zoeller contended that the charges be murder or nothing. Trathen agreed, adding robbery and auto theft. After the verdict, Zoeller admitted "I think the man was tragically killed, it never should have been brought to a public court room. No one was served by it."[102]

But the case was brought into a public courtroom. And the jury found that Robbins was innocent of murder. Beyond that, it was possible future court cases could see a rise in defenses against a fear of AIDS.

With the verdict a week old, and the robbery sentencing a week away, Scott Miley, the *Indianapolis Star* reporter most involved in the case, reflected on the trial and its outcome. "When a Marion Superior Court jury acquitted Herb J. Robbins of murder last week, it may have done more than spare the 17-year-old admitted homosexual prostitute from a lengthy prison sentence. It may have encouraged the use of a new line of defense in court trials everywhere." He went on to reference a conversation he had with prosecutors who said they would most likely use the tactic in a case if it were pertinent.[103] Trathen told Miley that "defenses spread like wildfire," while a law professor from Texas Southern University told Miley that a "fear of AIDS" defense for murder could be well-suited for cases of attempted rape.[104]

That professor, Eugene M. Harrington, also forecast "fear of AIDS" growing in civil lawsuits, including in divorce cases. Law professor Lawrence Gostin has also pointed

[102] Ibid. (All of this information is included in this story. It is not a quote from the juror. It is the reporter explaining the difference in prison time to his readers and a quote from Zoeller).
[103] Miley, Scott L. "Robbins case may trigger epidemic of AIDS defenses." *The Indianapolis Star*, September 23, 1988: page 1, section B.
[104] Ibid.

out that, aside from criminalization of people living with HIV, the AIDS "epidemic provoked litigation on almost every conceivable issue, including constitutional rights, social institutions, and personal and professional obligations.[105]

Indeed, several months later, in mid-January 1989, a Marion County man was acquitted of voluntary manslaughter charges after using the "fear of AIDS defense," though he was charged with reckless homicide, a lesser charge. That story has its own complications but is remarkably similar to the Robbins case. And it gave credence to county prosecutors who thought that Robbins' successful use of the "fear of AIDS defense" would "start a trend for similar pleas in sexually-related cases."[106]

But not everyone was willing to let two instances become a trend. "I'm not sure I buy that every homosexual relationship has one partner who has the right to end it in murder. I don't buy that," said one Marion County prosecutor. Neither Zoeller nor Trathen "would care to see the fear of AIDS surface again as an issue in a trial."[107]

In their editor's note, *The New Works News* responded "If Robbins' only crime had been the murder of Jackson, then he would still be walking on the streets of Indianapolis today. In fact, because of his age, it seems doubtful that Robbins will spend even two years in jail for the secondary crimes . . . for which he was thankfully convicted."[108] Indeed, Judge Tranberg admitted that he had given Robbins a lesser

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[105] Gostin, page xxiii.
[106] "Man Found Guilty of Roommate's Slaying: Fear of AIDS Defense Used Again." *The New Works News* (Indianapolis), February 1989: page 4.
[107] "Robbins case may trigger epidemic of AIDS defenses."
[108] "Killer Found Not Guilty: Fear of AIDS Defense Successfully Used."

sentence for robbery (normally 30 years minimum) because of his youth.[109] Robbins told reporters, "I am sorry for the actions I performed. I caused a lot [of] people hurt… and for that, I'm sorry."[110] Yet his words were insincere. Just before Christmas of 1988, Robbins' guardians in Marion County sued Donald Jackson's estate. The lawsuit alleged that "'Jackson placed prostitute Herb J. Robbins in a situation that caused the lawyer's own 'justifiable homicide.'" They alleged that Jackson sexually abused and molested Robbins, causing what we would now consider Post Traumatic Stress Disorder[111]. Marion County representatives did not acknowledge their Parke County counterparts' lapse in the role of his guardians.[112]

Section Six – The Second Instance

Philip Skorjanc, a white male, 38, came home about 3 a.m. on Sunday, June 12 (a.k.a. late Saturday night) after a night out drinking. He found his roommate, Erwin Behr, a white male, 61, still up and sitting at the kitchen table. Skorjanc talked with Behr, locked the front and back doors, and went to bed in his basement bedroom. On Sunday at about noon, Skorjanc heard the phone ringing. He made his way upstairs only to find Behr's lifeless, "partially clothed," body laying against a smashed China cabinet

[109] "Youth gets 25 years for robbery in Jackson case" and State v. Robbins.
[110] "Robbins Gets 25 Years." *The New Works News* (Indianapolis), November 1988: page 6.
[111] The lawyers alleged that Robbins' encounters with Jackson caused "him pain, suffering, mental anguish, emotional distress and damage to his character, life standards, and reputation." This is consistent with how Post Traumatic Stress Disorder is defined today. PTSD was first added to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* in 1980 but was not widely accepted for over a decade. See https://report.nih.gov/NIHfactsheets/ViewFactSheet.aspx?csid=58.
[112] Gelarden, Joseph. "Prostitute's guardian sues lawyer's estate." *The Indianapolis Star*, December 23, 1988: page 1, section B.

and glass everywhere. He had not heard a thing and all of the doors were still locked.[113] The police questioned Skorjanc more, learning that he and Behr had been roommates for three years. Skorjanc told police that Behr was drunk that night and started an argument with him when he arrived home. During the argument, Behr fell into the China cabinet. Behr then went to bed.[114]

Dr. Michael Clark, a pathologist completing the autopsy, said that the glass from the China cabinet was not the cause of death, however. It was a knife. "'There was no knife at the scene, which meant it had been hidden,"' said police sergeant Judd Green. "'The roommate said he was the only other person in the house and that no one else could have gotten in there."' When police confronted Skorjanc with this evidence, he confessed that he stabbed Behr with a knife from a kitchen cutting board during the argument. The blade severed an artery in Behr's leg. After falling back into the cabinet, Behr bled to death. Skorjanc then left the North Hawthorne Lane home and tossed the knife in a nearby body of water.[115]

Skorjanc worked for the Marion County Surveyor's Office as a draftsman. One fellow surveyor said Skorjanc had worked there for a year and that he was "an admirable-type person," adding that "I'd go to bat for him any time." Skorjanc would

[113] "Consultant found dead in home." *The Indianapolis News*, June 13, 1988: page 19 and McLaren, George. "Police investigate 2 unrelated deaths." *The Indianapolis Star*, June 13, 1988: page 28.
[114] "Man admits murdering roommate during dispute." *The Indianapolis Star*, June 14, 1988: page 20 and Hassel, Greg. "Man killed by stabbing, examiner says." *The Indianapolis News*, June 14, 1988: page 2.
[115] "Man admits murdering roommate during dispute" and "Man killed by stabbing, examiner says."

have to bat for himself in court, however, needing to find a good defense to eliminate his incriminating confession of a senseless murder.[116]

Before trial, prosecuting attorney Linda Lovin reduced the charges from murder to voluntary manslaughter after she reviewed the evidence and believed Skorjanc had not committed the murder intentionally.[117] On January 18 and 19, 1989, Skorjanc testified in a bench-trial – a trial where the lawyers and witness present their information to a judge, and the judge makes a final ruling – that the murder had been in self-defense. Skorjanc told the judge after he came home from a night out, he and Behr argued; Then, he said, "we struggled in the dark. I thought he was going to kill me." Skorjanc told the judge that he and Behr did not have a sexual relationship, but thought that when Behr confronted him, Behr was advancing on him sexually. He said that he then thought he might catch AIDS from Behr's advances. Lovin suggested that Skorjanc and defending attorney Timothy Bookwalter were trying to make AIDS part of the murder, despite no evidence that Behr had the disease.[118]

Skorjanc also testified that he "had no recollection of the stabbing." He threw the knife away – which was never found – returned home and went to bed, apparently not noticing Behr's body on the dining room floor. He woke up in the late morning, found Behr's body, and called 9-1-1 immediately. The judge, Roy F. Jones, ultimately decided to lessen the charge from voluntary manslaughter to reckless homicide,

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[116] "Man admits murdering roommate during dispute."
[117] Harris, Welton W. "City man guilty in landlord's slaying." *The Indianapolis News*, January 20, 1989: page 27.
[118] Gelarden, R. Joseph. "Man convicted of fatally stabbing roommate." *The Indianapolis Star*, January 20, 1989: page 36.

charging Skorjanc but offering the possibility for a suspended sentence.[119] A suspended sentence means that someone convicted of a crime trades jail time for probation – and often community service as well. The person would be under probation for an allotted time and if they meet the conditions of the probation for the whole time, their sentence is typically dissolved. Judge Jones sent Skorjanc to appear before the Department of Correction diagnostic center in Plainfield, Indiana, who recommended that Skorjanc receive an eight-year suspended sentence, which could be eliminated after three years of probation with 200 hours of community service.[120]

Lovin told Judge Jones that "to allow a person who kills another person probation would depreciate the seriousness the crime. The defendant said he felt he acted normally in his own defense; if he considers his actions normal, then I fear for the public's safety." Bookwalter rebutted that "the victim was responsible for the acts causing his death. My client had the right to defend himself."[121] This Bookwalter said despite calling Behr a "victim," insinuating that unproven allegations of sexual advancement are worthy of death. And this was another instance where one person "fought off" another for fear "he would catch AIDS," resulting in that person's death, along with their side of the story.[122] The implications for gay men were now larger than

[119] "City man guilty in landlord's slaying."
[120] Harris, Welton W. "Landlords' killer could get suspended sentence." *The Indianapolis News*, February 23, 1989: page 45.
[121] Ibid.
[122] "Man could get suspended sentence for fatal stabbing." *The Indianapolis Star*, February 23, 1989: page 34.

after the first instance: violence against them could potentially heighten, and assaulters and killers could apply the fear of AIDS defense to justify their violence or killing.

Section Seven – From Where Did This Come and Where Was It Going?

Since fear of AIDS is central to *State v. Robbins*, it is important to understand how the disease was viewed in the American legal system, and why.[123] Lawrence Gostin introduced in *The AIDS Pandemic: Complacency, Injustice, and Unfulfilled Expectations* (2004) that AIDS and LGBT social activism led to legal action and change in the courts.[124] In 2006 Ellen Ann Andersen provided *Out of the Closets & into the Courts: Legal Opportunity Structure and Gay Rights Litigation*, analyzing the relationship between the law and the social movements of LGBT groups, including fights against AIDS and associated discrimination based on stigma.[125] But these texts do not mention a "fear of AIDS" as defense for violent action.

From cases documented in the Westlaw database from throughout the country, only three cases contained "fear of AIDS" as contributing to either the defendant's or plaintiff's claims. All three cases occurred before *State v. Robbins*.

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[123] The most basic sources include 2006's *The Epidemic: A Global History of AIDS* by Jonathan Engel and 2012's *AIDS at 30: A History* by Victoria Harden. Both books relay the history of the origins of HIV/AIDS and the Western medical response to it. Engel sets the tone and gives the context for many of the authors I later discuss. See Engel and Harden, Victoria A. *AIDS at 30: A History*. Washington, D.C.: Potomac Books, 2012.

In a useful journal article from 2017 in the form of an interview with nine scholars, "Interchange: HIV/AIDS and U.S. History," scholars discuss the connection between the history of HIV and AIDS and United States history, giving context to the AIDS crisis and AIDS panic in the United States. They also use HIV/AIDS to examine how American people see the intersection of health and politics. See "Interchange: HIV/AIDS and U.S. History." *Journal of American History* 104, no 2 (September 2017): 431-460.

[124] Gostin.

[125] Andersen, Ellen Ann. *Out of the Closets & into the Courts: Legal Opportunity Structure and Gay Rights Litigation*. Ann Arbor, MI: University of Michigan Press, 2006.

The first case, *Thomas v. Atascadero Unified School District*, from a U.S. District Court in California in 1986 stemmed from an incident at the kindergarten in the school district. A young boy living with HIV/AIDS, who had been admitted to the school after deliberation by the school board, had gotten into a scuffle with another young boy on his third day. In the skirmish, the boy living with HIV/AIDS bit the other child. The school board then had a special hearing about the bite and decided the boy living with HIV/AIDS could no longer attend the school. No discussion was had about the behavior of the other boy, nor about the fact that biting and saliva do not transmit HIV, which was known at the time of the incident. This information was brought up in the court case. The school district's position in court was that the boy "poses a risk of transmission of the AIDS virus to his classmates or teachers." AIDS is not a virus; HIV is a virus that causes AIDS. This was also known at the time of the trial. The district's lack of preparation and swift and rash decision were a result of fear. The court documents noted that the school district's actions were for the purpose of "attempting to balance all of the interests involved and the address the fear of AIDS which exists within the Atascadero community."[126] Similarly, Robbins and Jackson were capitalizing on fear of AIDS in Indianapolis in 1988.

The second case, *Cordero v. Coughlin*, from a U.S. District Court in New York in 1984, stemmed from a prison that segregated inmates who had AIDS from the rest of the prison's population. In this case, the prison officials felt the need to separate the

[126] Thomas v. Atascadero Unified School District synopsis, June 19, 1987. Accessed through Westlaw, March 2019.

inmates with AIDS, a very new and unknown disease at that time, because it "bore rational relation to prison officials' objective to protect both sufferers [of AIDS] and other prisoners from tensions and harm which could result from other prisoners' fears," because they were "greatly feared by fellow inmates." Prison officials argued in court that they were trying to protect the inmates with AIDS, not discriminate against them or infringe on their rights. The inmates' lawyers argued that the prison violated the First, Eighth, and Fourteenth Amendment rights of the inmates with AIDS. For the Fourteenth, the court ruled that, based on the protection they were receiving, whether the fears were "realistic or not," the inmates with AIDS were not being treated unfairly in terms of the amendment's Equal Protection Clause. The court also noted the prison was working "to improve their ability to cope with the needs of prisoners with AIDS" as they learned more about the disease and improved their system. For the Eighth, the court ruled that the amendment says inmates should be provided "adequate food, clothing, shelter, sanitation, medical care, and personal safety," and the inmates with AIDS were not denied any of those things. For the First, the court ruled that the amendment says that a prisoner's rights are "limited" by the fact of a criminal's "confinement and the needs of the penal institution," and so the prison could curtail the inmates with AIDS' right to free association (interacting freely among the population). The court ruled the prison was acting in all of the inmates' best interests. The prison also admitted to being in an unknown situation.[127] It is unclear if their policies were changed once more information about HIV and AIDS became available. While not quite the same thing, Herb

[127] Cordero v. Coughlin synopsis, August 3, 1984. Accessed through Westlaw, March 2019.

Robbins and Christopher Zoeller argued in court that Robbins' actions were him protecting himself in response to a fear of AIDS.

The third case was from a U.S. District Court in Louisiana, meaning the "fear of AIDS" sentiment appeared all around the country: once in the South, once in the East, once in the West, and twice in the Midwest (both in Indiana – in Indianapolis).[128]

In 1988, Law Professor John Patrick Darby wrote a paper titled "Tort Liability for the Transmission of the AIDS Virus: Damages for Fear of AIDS and Prospective AIDS" in which he argued that courts have allowed people to sue for damages, emotional or physical, when presenting a case involving fear of getting cancer from being exposed to carcinogens, so the courts should allow the same for "fear of AIDS" after potentially being exposed to HIV. Darby argues that "just as a reasonable and genuine fear of cancer constitutes a present injury, a reasonable and genuine fear of AIDS is a present injury, even though development of AIDS is speculative." He is saying that even if there is not actually a threat of contracting HIV leading to AIDS, the fear of said contraction can justify legal action. The same applies if a person did actually end up contracting AIDS.[129] Robbins and Zoeller, instead of counter-suing for emotional distress based on a fear of contracting HIV, instead argued that the fear of AIDS justified Robbins' action of stabbing Donald Jackson to death.

[128] Woodall v. Foti synopsis, October 21, 1986. Accessed through Westlaw, March 2019.
[129] Darby, John Patrick. "Tort Liabilty for the Transmission of the AIDS Virus: Damages for Fear of AIDS and prospective AIDS." Washington and Lee University School of Law, 1988.

Historian Lawrence Gostin wrote that "fear of exposure to HIV has created a burgeoning area of litigation.[130] Sociologist Brett Stockdill also wrote on the legacy of fear of AIDS that "the hysteria related to AIDS – fueled by the fusion of antigay sentiment, ignorance about HIV/AIDS, and fear of disease – has catalyzed homophobic violence and discrimination targeted at gay men, lesbians, bisexuals, and transgendered people regardless of HIV status."[131]

It appears that "fear of AIDS" as a tool for defense or prosecution in a court setting was contained after Skorjanc's case (the case following *State v. Robbins* in Indianapolis). But the conditions in Indianapolis had been ripe to have two cases involving the fear within months of each other. And scholars, attorneys, and journalists all believed that the fear could be used again; Perhaps "fear of" something has continued on, just not with AIDS, but with other diseases or other factors entirely. That, however, is a completely separate study.

[130] Gostin, pages 36 and 188 and Andersen, pages 43, 78-81, and 112.
[131] Stockdill, Brett C. Activism against AIDS: At the Intersection of Sexuality, Race, Gender, and Class. Boulder, CO: Lynne Rienner Publishers, Inc., 2003.

Conclusion – HIV Is Not a Crime

In 1988, *State v. Robbins* introduced a "fear of AIDS" defense to Indiana and the nation, setting Indiana back in a country progressing toward inclusive rights for LGBTQ+ people. Indiana still lags behind in the fight for equality in regard to gay men and HIV.

Indiana legislators have tried to push HIV to the background. Kevin Johnson, a gay man living in Indianapolis, went to Washington D.C. to speak to, then Representative, Mike Pence after Pence took office at the end of the Bill Clinton administration and beginning of George W. Bush administration, circa 2000. Before his scandal, Clinton had been ready to push significant federal funding to help people with HIV in the United States. He even pushed to have HIV declared a national security issue.[132] Pence, however, told Johnson that "Indiana doesn't have a problem. [HIV] is a problem for other states."[133]

But HIV was still a problem for Indiana in the late 1990s, especially among the black community.[134] The narrative of AIDS, however, is that it was a white man's disease; this according to posters and advertisements put up to raise awareness for the

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[132] "The Age of AIDS." Documentary film. PBS. May 30, 2006 and Elbe, Stefan. *Virus Alert: Security, Governmentality, and the AIDS Pandemic*. New York: Columbia University Press, 2009. Page 4.

Elbe argues that the reasoning behind making HIV/AIDS a security issue is usually an attempt "to use the rhetorical power of security in order to mobilize greater political support…" I disagree that this applies to Clinton, as he made HIV/AIDS a national security issue on his way out of office during a scandalous second term. Elbe is not specific on if this theory applies to an outgoing leader potentially helping a candidate from the same party for the next term.

[133] Kevin Johnson and Arnold Stewart. Interview by Mark A. Lee. Oral History. October 27, 2014. From SC3353. Kevin Johnson and Arnold Stewart Oral History. Page 14. Indiana Historical Society.

[134] "HIV/AIDS among Black Americans." Presentation on HIV by Brothers United, Inc. October 18, 2018.

disease. What these posters failed to take into account was that there were plenty of black gay and bisexual men, and men who identified as straight but had sex with other men "on the down low." Men then spread the disease to women in the black community, leading to high rates of HIV transmission among black women.[135] Scholars attribute these high rates in the black community to an association of AIDS with gay men combined with homophobia in black communities, the churches especially.[136] AIDS in black communities was mostly spread heterosexually, especially for women, but homophobia identifies AIDS as a gay disease, causing a lack of action or engagement in black communities. And while AIDS was used as an instrument of fear by certain Indianapolis religious leaders, confronted with violence by its police out of fear, and even used as a fear-based defense in court, it was only something to fear – only "a problem" – when it was affecting white communities, not black ones.

Rising rates of HIV infection led to the creation of a Brothers United chapter in Indianapolis to help get people of color living with HIV diagnosed and into care. Yet the state would not recognize an issue, even as HIV infection continued to rise among black people – gay or bisexual men especially – and transgender people at rates several times higher than straight white counterparts.[137] In Indiana, a state with a majority white population, AIDS became a non-issue to its majority-white legislators, like Pence. This non-issue stance was, and is, rooted in racism; black people became the fastest growing

[135] Robertson IV, Gil L., ed. *Not in My Family: AIDS in the African-American Community*. Chicago: Agate, 2006. Page 195.
[136] Ibid, page 187; Stockdill, page 154; and Engel, pages 112-113 and 160-163.
[137] "HIV/AIDS among Black Americans."

population infected with HIV and the origins of the virus are learned to have come from Africa – and "Africa is full of black people," black woman comic Mo' Nique joked.[138] By the turn of the century, the "fear of AIDS" first found in *State v. Robbins* was used to write laws criminalizing people with HIV/AIDS and to ignore a growing epidemic in Indiana's minority communities.

While men who have sex with other men, which encompasses most gay men, are allowed to donate blood as of 2015, as of this writing the Indiana Blood Center still follows FDA policy barring them from donating blood within a year of having sex for fear they may have HIV.[139] Blood banks obviously do not want blood that contains a virus like HIV or Hepatitis C. However, such a policy is discriminatory because a) not all gay men have one or both of those diseases, b) many straight people do have HIV, and c) all blood is tested, so even if someone with a virus donated blood, it would not join the blood supply and would be destroyed. Anyone in Indiana who has an HIV positive diagnosis is barred from donating blood, plasma, and semen by law. Breaking this law carries a felony charge, but this law barring them from attempting to donate is antiquated because all blood is tested. Someone might spend many years in prison for breaking a law that does not actually protect the blood supply, since it is already protected.[140]

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[138] Robertson IV, page 76.
[139] "Blood Donor Referral." U.S. Food and Drug Administration. Accessed 2018. https://www.fda.gov/forpatients/illness/hivaids/safety/ucm117929.htm and "Blood Donation FAQ." Versiti. Accessed 2018. https://www.versiti.org/ways-to-give/blood-donation/donation-eligibility-faq.
[140] IC 16-41-14-17 (Public Health Code) and IC 35-45-21-1 (Criminal Code)

Indiana also criminalizes people with HIV out of fear of spreading the virus that causes AIDS. The "Duty to Warn" law stipulates that persons living with HIV must disclose their HIV positive status to anyone they will have sex with. Breaking this law also carries a felony charge.[141] This law may seem even more common-sense than the one on donating blood. However, this law is outdated, because many people living with HIV are virally suppressed, meaning they cannot pass the virus on to someone else. Viral suppression is achieved by taking one of several medicines and making regular doctors' visits to keep tabs on the viral load in the body. Disclosing an HIV-positive status is also not as easy as it sounds. People with the virus face incredible amounts of social stigma, including discrimination, fear, violence, shame, disownment, and more.[142] Law professor Lawrence Gostin noted that "persons living with HIV/AIDS have to endure moral disapproval of their behavior and archaic attitudes that they present a health menace. The public's association of the disease with traditionally disfavored groups – gays, injection drug users, and sex workers – only compounds the bigotry."[143]

Still, some argue that the law makes sense because not everyone who has HIV is aware of their status or do not take medications and so are not virally suppressed. To the point on not knowing their status, the law does not apply to people who have not already been identified in Indiana's medical database. To the point on not being virally

[141] IC 16-41-7-1 (Public Health Code) and IC 35-45-21-3 (Criminal Code). Often referred to as the "Duty to Warn" law.
[142] Conrad, pages 51-56; "HIV Stigma and Discrimination"; and Judith D. Auerbach, Justin O. Parkhurst, and Carlos F. Cáceres. "Addressing social drivers of HIV/AIDS for the long-term response: Conceptual and methodological considerations." *Global Public Health* (2011): 1-11.
[143] Gostin, page 48.

suppressed, I contend that a) not everyone in the United States has access to health care – Stigma, transportation, and cost are just three barriers most common to people living with HIV; b) many people living with HIV are engaging in survival sex – that is, sex that is necessary to have shelter or food, or to avoid abuse in an abusive relationship – including prostitution/ sex work; and c) there is medication that has been in the U.S. since 2012 called Pre-Exposure Prophylaxis (PrEP) that is 99% effective in preventing the spread of HIV that anyone who does not have HIV can take, especially people who have a higher chance of sleeping with someone living with HIV: those who trade food or their home for the night for sex, people who refuse condoms (though a condom is always recommended since PrEP does not prevent other STIs), and people who have sex with injection-drug users, among others. There is also medication to take after having sex with someone you think might have HIV called Post-Exposure Prophylaxis (PEP), that is effective at preventing transmission if taken soon after the sexual act.[144]

One other important point to insist that the law is discriminatory is that there are no other laws that criminalize someone for passing on a disease, no matter how deadly it once was – and HIV is no longer a death sentence, people live with HIV now as long as people without it; it is a chronic manageable illness.[145] There are no laws criminalizing people for passing on Hepatitis C, Ebola, Tuberculosis, or any other sexually transmitted or deadly diseases and infections. HIV is the only one. Not to mention that

[144] "HIV Stigma and Discrimination" and Zeboski, Adam. "PrEP 101: The Basics of the HIV Prevention Pill." *HIV Equal Online*, November 6, 2014.
[145] "HIV Criminalization: What's so bad about laws that criminalize people living with HIV?" Presentation by Dr. Carrie Foote. November 15, 2018.

HIV is the hardest to transmit of any sexually transmitted disease: a 1.4% chance when receiving a penis into an anus, a 0.11% chance if inserting a circumcised penis into an anus (0.62% if uncircumcised), a 0.08% chance if receiving a penis into a vagina, and a 0.04% chance if inserting a penis into a vagina.[146] HIV is targeted for its connection to the early days of the AIDS epidemic when it was seen as a gay disease. That is discriminatory.

The fear of AIDS in Indiana's past is directly linked to HIV criminalization in the present. I echo the *New Works News* editorial from 1988, which still rings true today: "Our only protection is to stand together and use our numbers and talents to demand justice… The time to stand together is now."[147]

[146] "HIV/AIDS." Information sheet. Indiana State Board of Health.
[147] "Getting Away With Murder." *The New Works News* (Indianapolis), November 1988: page 3.

Further Connections – You Can't Mix Fear and Marriage

Same-sex marriage was not always a goal for the gay and lesbian communities. Nor was it an attainable goal. Most gay rights proponents were unsure if "marriage was worth fighting for at all" or were opposed to fighting for it, since there were other things they should be fighting for.[148] Their lives and livelihoods, for example.

For many, fear of AIDS – and death – was a catalyst to marry a life partner, to make the relationship more permanent than the people in it. For those not in the gay community, fear of AIDS and gay people's association with AIDS made Indiana legislators reluctant to give equal rights, including marriage and the right to enter any business, to LGBT persons despite the push from other states to legalize gay marriage and strengthen anti-discrimination laws. Indiana's fears of HIV/AIDS are directly tied to the high-profile, highly publicized cases of Ryan White and *State of Indiana v. Herb Robbins*.

In the 1960s and 1970s, gay people were labeled sinners by religions, criminals by governments, and insane by psychiatrists. Before that they were labeled communists by politicians. For perspective, "sinners were kept away from sacred rites like marriage; criminals were imprisoned; crazy people were put in asylums; and people of doubtful loyalty were fired from their government jobs."[149] As well, by the 1980s and into the 1990s, gay men, mostly, were fighting for the government and FDA to recognize AIDS as

[148] Frank, Nathaniel. *Awakening: How Gays and Lesbians Brought Marriage Equality to America*. Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2017. Page 2.
[149] Hirshman, Linda. *Victory, the Triumphant Gay Revolution: How a Despised Minority Pushed Back, Beat Death, Found Love, and Changed America for Everyone*. New York, New York: HarperCollins Publishing, 2012. Page xvi.

an issue that they should help with, since it was killing U.S. citizens at an epidemic rate.[150]

The first time that gay marriage was supported in public was through the publication *ONE*, a gay-themed magazine, in 1963. The story ran as evidence that gay men and women often lived together and essentially acted as married couples.[151] But most gay activists were advocating for humanity, dignity, and love; that they were not scum just looking for sex. Not for marriage. Columbia University Law professor Nathaniel Frank argues, however, that the fight for those ideals "was critical to the development of marriage equality as a viable concept."[152] After all, marriage has been a symbol of dignity in many cultures of the world, but especially in America.[153]

Indeed, marriage in America started off as a signifier of a man's dignity, wealth, and superiority over women. Over time, women flipped the script and gained their independence. After the Great Depression, marriage became about love, family, and togetherness, a new sign of dignity for both men and women. By the end of the twentieth century, then, "the rationale for gay marriage increasingly appeared no different from the rationale for straight marriage," since gay companionship has almost always been defined through love, not just sex.[154]

Frank also argues that the fight for marriage equality owes its start to the "liberal tradition of American protest" popularized by civil rights movements in the 1960s and

[150] Ibid. Pages 170-215.
[151] Frank, page 11.
[152] Ibid, page 36.
[153] Hirshman, page 230.
[154] Frank, pages 4-5.

1970s.[155] Moreover, gay activists identified with the counterculture movements of those decades.[156] Initially, "by framing gay rights as a fight for equal dignity," gays could approach "traditional ideas and institutions" of American life, such as marriage, and "alter the meaning of the family."[157] This effort would set up the possibility of a fight for same-sex marriage.[158]

Early on, most states had sodomy laws, stemming from colonial laws, making it illegal to have anal or oral sex, especially between members of the same sex. Illinois was the first state to repeal its sodomy ban in 1961.[159] Its next-door neighbor, Indiana, would not repeal its sodomy law until 1976, although still before most states. Sodomy laws, however, were not particularly disruptive to the gay community, nor was sodomy a much-discussed subject in America. Not until the AIDS crisis. With the advent of HIV/AIDS, sodomy came to the forefront, with AIDS being labeled as a gay disease. The religious right, especially, condemned sodomy and gay behavior, pointing to AIDS and death as punishment for such sin. AIDS got gay activists going, but not for marriage at first. The fight against AIDS brought gay and lesbian people together to protest government inaction and a lethargic FDA for their lack of humanity and compassion toward fellow human beings, gay or not.[160]

[155] Ibid. Page 9.
[156] Ibid. Page 76.
[157] Ibid. Page 8.
[158] Ibid. Page 76.
[159] Ibid. Page 37.
[160] Ibid, pages 59-76.

However, the AIDS battle was a battle "for moral inclusion," for gay people had to prove that AIDS was not just a homosexual disease and that they were not being punished for their actions. According to lawyer and author Linda Hirshman, this "moral inclusion" aspect that stemmed from the AIDS crisis "gave birth to renewed agitation for marriage equality," since marriage and family, especially among the attacking religious right, was the center of morality in America.[161] For Hirshman, the new focus on marriage after the AIDS crisis went beyond the government helping its citizens. Gay people wanted "in the club of social acceptance."[162]

In May 1993 marriage moved from the "fringe" of gay activism and into the forefront. The Hawaii Supreme Court found that an anti-gay-marriage law was discriminatory based on sex, and therefore unconstitutional (in Hawaii); Hawaii's constitution included an equal rights bill. The ruling, although specific to Hawaii, was seen as a beacon of hope for similar cases in other states.[163]

After the Hawaii ruling, the country had a tough stance against gay marriage. In 1997, Indiana passed a law banning same-sex marriage in the state.[164] The following year Indiana passed a law denying recognition of same-sex marriages in other states, meaning gay couples could not get married in Vegas, for example, and return with the expectation that their bond would be legal.[165] Until 2014 Indiana's gay residents had no

[161] Hirshman, pages 232-233.
[162] Ibid, page 238.
[163] Frank, pages 97-98.
[164] Murray, Joe. "Indiana's gay marriage debate highlights possible crimes," *USA Today*, July 10, 2013.
[165] "Indiana defends state's ban on gay marriage," *The Advocate*, October 3, 2003.

way to formalize a union without leaving the state for good. The 1996 Defense of Marriage Act also denied federal recognition of same-sex marriage.[166] Shortly after, the George W. Bush administration had an anti-gay stance, along with a conservative-controlled Congress, and little high-profile progress was made. However, by the end of his first term, a new "state-based movement for marriage equality had been born."[167] This movement would be classified as a "brick by brick" approach, where cases would be won or would appeal at the city or county level, the state level, the circuit level, and perhaps the national level.[168] Additionally, by June of 2003, the U.S. Supreme Court ruled that same-sex relationships could not be criminalized, ending all sodomy laws nationwide.[169]

By the end of Barack Obama's first term as president, eight states and Washington DC had overturned bans on gay marriage.[170] In 2013, the U.S. Supreme Court heard a case brought by a gay couple against the Defense of Marriage Act. The court ruled that section 3 of that law was unconstitutional, allowing gay married couples federal recognition for tax purposes. This decision opened the door for more rulings.[171]

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[166] GLAAD, "Frequently Asked Questions: Defense of Marriage Act (DOMA)," GLAAD. Accessed 2017. http://www.glaad.org/marriage/doma.
[167] Frank, page 172.
[168] Ibid, pages 193-216.
[169] Ibid, page 351.
[170] Dates observed in "Same-Sex Marriage in the United States," Wikipedia, December 10, 2017. Accessed 2017. https://en.wikipedia.org/w/index.php?title=Same_sex_marriage_in_the_United_States&oldid=814676308.
[171] Frank, pages 293-303.

Ten more states (or federal courts in them) overturned their bans by the time a ruling came down in Indiana.[172]

On June 25, 2014, the wait was over. Federal District Judge Richard Young ruled that Indiana's ban on same-sex marriage was unconstitutional.[173] He stated in his ruling that "same-sex couples, who would otherwise qualify to marry in Indiana, have the right to marry in Indiana…. These couples, when gender and sexual orientation are taken away, are in all respects like the family down the street. The Constitution demands that we treat them as such."[174]

For many, the 2014 ruling was "a historic victory in their long struggle for equality in Indiana." In that first day alone, the Marion County Clerk's office processed 250 marriage licenses and performed 186 wedding ceremonies.[175]

However, on June 27, 2014, the U.S. 7th Circuit Court of Appeals granted Indiana Attorney General Greg Zoeller (no relation to Robbin's attorney Christopher Zoeller) a stay, meaning Richard Young's ruling was put on hold while the case was reviewed by the U.S 7th Circuit Court. And for the time being, that meant the marriages were on hold as well.[176] In September the appeals court found that Richard Young's ruling should be

[172] Dates observed in "Same-Sex Marriage in the United States."
[173] Jill Disis and Tim Evans. "For newlyweds, possible stay of Indiana same-sex marriage ruling clouds horizon." *Indianapolis Star*, June 25, 2014 and June 26, 2014.
[174] Neuman, Scott. "Court Stays Decision Striking Down Indiana's Gay Marriage Ban." *NPR*, June 27, 2014.
[175] "For newlyweds, possible stay of Indiana same-sex marriage ruling clouds horizon."
[176] "Court Stays Decision Striking Down Indiana's Gay Marriage Ban."

maintained. However, the state requested another stay and an appeal to the U.S. Supreme Court.[177]

But on October 6, 2014 the U.S. Supreme Court refused to hear the Indiana case (along with cases from Wisconsin, Oklahoma, Virginia, and Utah), officially cementing the previous court rulings that Indiana's ban on same-sex marriage was unconstitutional. The next day, Attorney General Greg Zoeller issued a formal notice to Indiana's 92 county clerk's offices via his chief deputy Matt Light, stating that "county clerks will be prohibited from denying marriage licenses to same-sex couples so long as all other requirements are met."[178] The marriages performed on June 25th were legal.

Elsewhere in the country, eleven more states overturned their gay marriage bans by January of 2015 making the total 35 plus Washington, D.C. Guam also repealed its ban in June.[179]

The fight for the lesbian and gay communities in Indiana was not over, however. In March of 2015, Indiana governor Mike Pence signed a bill, called the Religious Freedom Restoration Act, that allowed people "to opt out of laws protecting gays and lesbians from discrimination if they cited religious reasons."[180] The backlash to this bill was tremendous, both in and out of LGBTQ+ communities and nationally, for the bill extended to opting out of more laws than the ones preventing discrimination. Governor

[177] Tim Evans and Jill Disis, "Federal appeals court lifts Indiana gay marriage ban." *USA Today*, October 7, 2014.
[178] Ibid.
[179] Dates observed in "Same-Sex Marriage in the United States."
[180] Frank, page 343.

Pence was eventually shamed into asking the legislature to modify the bill, although it still did not fully protect against discrimination of LGBTQ+ folk.[181]

In January 2015 the U.S. Supreme Court had decided to hear four gay marriage cases on appeal from the Sixth Circuit Court of Appeals. That circuit includes Michigan, Ohio, Kentucky, and Tennessee. There was one case from each state court. The Supreme Court heard them all at once under the Ohio case name: *Obergefell v. Hodges*. On June 26, 2015 the court ruled 5-4 that bans on same-sex marriage were unconstitutional, making gay marriage legal federally for good (barring a constitutional amendment or a later court's reinterpretation).[182]

Although Indiana caught up in the fight for marriage nearly thirty years later, despite its government's best efforts not to, Indiana still lags behind in the fight for equality in regard to gay men and HIV, thanks in part due to fear of gay men and a fear of AIDS, as exhibited through *State of Indiana v. Herb Robbins,* Philip Skorjanc's case, and the violence exhibited by civilians and police in Indianapolis throughout the 1980s and 1990s. Those fears and the violence, tied to homophobia, have directly impacted Indiana's path toward potential for or lack of LGBTQ+ acceptance, including gay marriage, discriminatory laws, and the ability to live freely (like the choice to donate blood).

[181] Tony Cook and Brian Eason. "Gov. Mike Pence signs RFRA fix." *The Indianapolis Star*, April 1, 2015.
[182] Frank, pages 351-354.

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