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## TRIBUTES

### JUSTICE ROBERT D. RUCKER: LET FREEDOM RING

CHIEF JUSTICE LORETTA H. RUSH\*

“My country, ‘tis of thee, sweet land of liberty, of thee I sing.  
Land where my fathers died, land of the pilgrims’ pride,  
From every mountainside, let freedom ring!”<sup>1</sup>

Justice Rucker became the 105th Justice of the Indiana Supreme Court on November 19, 1999.<sup>2</sup> At his robing ceremony, Valparaiso Law School Dean Edward Gaffney, Jr. introduced Justice Rucker with a call to justice and liberty.<sup>3</sup> Invoking Dr. Martin Luther King, Jr.’s exhortation that “[n]ow is the time to make justice a reality for all of God’s children,”<sup>4</sup> Gaffney inspired attendees to stand and sing *My Country, ‘Tis of Thee*.<sup>5</sup>

During one of my many forays across the third floor of the Indiana Statehouse to Justice Rucker’s chambers, he shared this beautiful story. He even found Dean Gaffney’s remarks from that day and graciously shared them with me.

Just a few months ago, we saw Justice Rucker off in a formal retirement ceremony. That ceremony marked the end of his time on the Supreme Court bench, and did so in the same way it began—singing of liberty and freedom. I invited the Herron High School choir to sing *My Country, Tis of Thee* as a surprise to Justice Rucker. As everyone stood and sang, the harmony provided a clear reminder that freedom does ring in Indiana. And it does so, and will

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1. *My Country ‘Tis of Thee*, LIBRARY OF CONGRESS, <https://www.loc.gov/item/ihas.200000012/> [<https://perma.cc/R4WF-ZNSL>] (last visited Dec. 4, 2017); SAMUEL FRANCIS SMITH, *My Country ‘Tis of Thee* (1831).

2. *Justice Robert D. Rucker*, COURTS.IN.GOV, <http://www.in.gov/judiciary/citc/2834.htm> [<https://perma.cc/G4YQ-4SA7>] (last visited Dec. 4, 2017).

3. Dean Edward McGlynn Gaffney, Jr., Remarks at Hon. Robert D. Rucker’s Robing Ceremony (Nov. 19, 1999).

4. Rev. Martin Luther King, Jr., Speech at the March on Washington: I Have a Dream . . . 2 (Aug. 28, 1963), available at <https://www.archives.gov/files/press/exhibits/dream-speech.pdf> [<https://perma.cc/M6KQ-MZW9>].

5. SMITH, *supra* note 1.

continue to do so, in large part because of Justice Rucker.

I have often spoken of Justice Rucker's firm grasp of justice and attendant sense of humanity.<sup>6</sup> Like all Justices, Justice Rucker has two stories: the one before he joined our Court, and the one after he arrived.<sup>7</sup> He's now starting to write a third story by serving Indiana in his retirement. Each of Justice Rucker's stories ought to be told time and again.

So here, I strive to do justice to the stories of a singular man. A man who, as I will tell, has spent his life serving his country and his state—whose name belongs among the heroes of Indiana. As Justice Mark Massa recently and quite rightly recognized, “Robert Rucker is one of the great figures in the history of our state.”<sup>8</sup>

### I. BEFORE JOINING THE COURT

It's appropriate to begin with the story that led Justice Rucker to our Court. But I don't tell this story because it's interesting (though it certainly is) or because it's impressive (though it's certainly that, too). No, I tell Justice Rucker's story because it reveals his character. It shows the work ethic, intelligence—and most of all, humility—that would ultimately define his tenure as a Supreme Court justice.

Justice Rucker grew up in a family of fourteen in Gary, Indiana.<sup>9</sup> Though neither of his parents had a high-school diploma, his dad—Robert Dennis Rucker, Sr.—understood the importance of a first-rate education. And young Robert Rucker listened.

After graduating from Roosevelt High School—where he served in the ROTC—Justice Rucker enrolled at Indiana University Northwest in 1964, pursuing his degree at night while working in the Gary steel mills during the day. That was a time of upheaval in our nation. The Vietnam War was raging. In the fall of 1966, Justice Rucker received his conscription letter, and his education was interrupted. His country called, and he responded.

And what a blessed thing for our country. With his characteristic humility, Justice Rucker described himself as “a grunt; an infantry soldier” who would “go on patrol, [and] carry ammo, water, and food.”<sup>10</sup> But the Army sees Justice

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6. Chief Justice Loretta H. Rush, State of the Judiciary 2017: Praise for our Partners in Justice (Jan. 18, 2017), *available at* <http://www.in.gov/judiciary/supreme/2552.htm> [<https://perma.cc/ZJV5-F6WN>].

7. Chief Justice Loretta H. Rush, Comments at Hon. Christopher M. Goff's Investiture Ceremony (Sept. 1, 2017), *available at* <https://www.youtube.com/watch?v=AU8b4bi0RXY>.

8. Justice Mark S. Massa, Comments at Hon. Robert D. Rucker's Retirement Ceremony (May 8, 2017), *available at* <https://www.youtube.com/watch?v=8iXUykb5Xeg&feature=youtu.be>.

9. Justice Robert D. Rucker, Behind the Scenes: An In-Depth Journey Through the Inner Workings of the Indiana Supreme Court, Inaugural Robert D. Rucker Lecture at Valparaiso Law School (Mar. 26, 2015) [hereinafter Robert D. Rucker Lecture].

10. Javonte Anderson, *Vietnam vets reflect on life in the trenches, ostracization and yearning for acceptance*, CHI. TRIB. (March 30, 2017, 6:14 PM), <http://www.chicagotribune.com/suburbs/>

Rucker in a different light—and so should we. As part of the Army 1st Air Cavalry division, Justice Rucker fought to relieve Marines under siege at Khe Sanh.<sup>11</sup> He received a Purple Heart and a Bronze Star.<sup>12</sup> Justice Rucker is a war hero.

After his military service, Justice Rucker heeded his dad's advice and returned to school. He dabbled in pre-med studies before meeting an intrepid young lawyer. Inspired, Justice Rucker pivoted toward law, eventually enrolling at Valparaiso's law school.

A few years later, after graduating, Justice Rucker joined a small East Chicago law firm. He practiced a little bit of everything for the next thirteen years. Then in 1990 he applied for a newly minted seat on the Indiana Court of Appeals. Justice Rucker had to pinch himself when Governor Bayh appointed him.<sup>13</sup> This was historic: Justice Rucker was the first African-American appellate judge in Indiana.<sup>14</sup>

Of course, Justice Rucker's tremendous work ethic didn't diminish when he joined the Court of Appeals. In his eight years on that bench, he wrote over nine hundred majority opinions—and in the midst of that, he also earned a Masters of Laws degree from the University of Virginia.

## II. TIME ON THE COURT

In 1999, Governor O'Bannon appointed Justice Rucker as the 105th Justice of the Indiana Supreme Court.<sup>15</sup> His Supreme Court tenure is defined by his dedication to the rule of law, key contributions to Indiana jurisprudence, profound influence on his colleagues, and mentorship to the next generation of attorneys.

### *A. Dedication to Civility and the Rule of Law*

Justice Rucker's work reflects his strong belief in the rule of law. As he recently reflected with great pride, there was not a partisan political divide among Justices during his tenure.<sup>16</sup> This apolitical ethos shone through in *Peterson v. Borst*, where the Court addressed a claim of racial discrimination in the districting for the City-County Council of Indianapolis and Marion County.<sup>17</sup> Rejecting a redistricting plan that was unanimously favored by one party and unanimously opposed by the other, the Court drew its own plan “without consideration of party

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post-tribune/news/ct-ptb-rucker-vietnam-vets-st-0331-20170330-story.html [https://perma.cc/GG2Q-HXMV].

11. Fatima Hussein, *Indiana's sole minority Supreme Court Justice to retire this year*, INDYSTAR (Jan. 18, 2017, 7:37 PM), <https://www.indystar.com/story/news/2017/01/18/indianas-sole-minority-supreme-court-justice-retire-year/96729920/> [https://perma.cc/5GPL-7Y8R].

12. *Id.*

13. *Justice Robert D. Rucker*, *supra* note 2.

14. Hussein, *supra* note 11.

15. *Justice Robert D. Rucker*, *supra* note 2.

16. Robert D. Rucker Lecture, *supra* note 9.

17. 786 N.E.2d 668 (Ind. 2003).

affiliation or incumbency.”<sup>18</sup> Justice Rucker has frequently discussed his colleagues’ joint effort working on this case “around the clock” as one of his finest moments on the Court.

Justice Rucker is perhaps best known, however, for his unwavering civility. Respect is his mantra, and he allows no exceptions. During his time on the Court, these attributes were not merely a public façade. In our conference room and dissenting opinions, there was “no biting sarcasm, no combativeness, no effort to cast members in the majority as being intellectually dishonest and the like.”<sup>19</sup> Rather, there was always room for polite-but-passionate disagreement with Justice Rucker on the Court. As he put it, “while we are generally guided by a collegiality norm, we do not adhere to a consensus norm.”<sup>20</sup>

One way that Justice Rucker lived out that collegiality norm was by following our Court’s tradition that the newest Justice votes first on all cases. I learned this tradition on my first day. When I asked if there were any “mulligans” on this voting first, Justice Rucker simply leaned in and said “No.” He had never shifted that burden to another Justice in his eleven years as the junior Justice—and he expected the same of me.

Justice Rucker also demanded that litigants respect each other, and that the Court respect every party—no matter their stature or the quality of their legal arguments. At one oral argument shortly before his retirement, Justice Rucker gently took umbrage with “the tone and tenor of some of the remarks” in a transfer brief. After recounting some of the *ad hominem* attacks against the opposing party, he counseled that the advocate would “be well-advised to temper the way [he] presents himself” to the Court.<sup>21</sup> This was Justice Rucker’s way. He always spoke gently and respectfully, and demanded the same of everyone else in the legal profession.

Justice Rucker’s respect extended to litigants, too. Our Court has always dedicated itself to blind justice, to giving equal justice under law to everyone—rich or poor, corporation or individual, urban or rural. And it was Justice Rucker who led the way during his time on the Court. In his own words, “it is all a matter of due process—the right to be heard. The rules are the same and all are equal before the law.”<sup>22</sup> One of my favorite of what I like to call “Justice Ruckerisms” is a comment he made on more than one occasion: “sometimes justice is just us.”

One of his last opinions illustrates just how deeply Justice Rucker held that conviction. In *McCullough v. CitiMortgage, Inc.*, a married couple of Vietnam-era veterans appealed after CitiMortgage foreclosed on their home.<sup>23</sup> After they filed a “woefully defective” brief and appendix, the Court of Appeals dismissed

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18. *Id.* at 669.

19. Robert D. Rucker Lecture, *supra* note 9.

20. *Id.*

21. Oral Argument at 19:25-20:18, *Consumer Att’y Servs. v. State*, 53 N.E.3d 599 (Ind. Ct. App. 2016), *aff’d*, 71 N.E.3d 362 (Ind. 2017).

22. Robert D. Rucker Lecture, *supra* note 9.

23. *See generally* 70 N.E.3d 820 (Ind. 2017).

their appeal.<sup>24</sup> While noting that the Court of Appeals was “well within its discretion,” Justice Rucker led our Court to grant transfer and address the McCulloughs’ arguments. Though the McCulloughs could not win under the law, they were heard—and they were heard because of Justice Rucker.

### *B. Lasting Contributions to Indiana Jurisprudence*

I’ve talked a lot so far about Justice Rucker’s personality and his leadership in respect and civility. But his example doesn’t end there. Justice Rucker is also a lion of the law.

Any conversation about Justice Rucker’s contributions to Indiana law must start with his opinion in *Anglemyer v. State*.<sup>25</sup> There, Justice Rucker grappled with the turmoil in Indiana sentencing law following the revolutionary U.S. Supreme Court cases *Apprendi v. New Jersey*<sup>26</sup> and *Blakely v. Washington*.<sup>27</sup> Those cases established that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”<sup>28</sup> This threw Indiana sentencing law into disarray, leaving the legislature scrambling to respond.<sup>29</sup>

Enter Justice Rucker and *Anglemyer*. In a treatise on Indiana sentencing law, Justice Rucker wrote what Justice Frank Sullivan, Jr. called “the single most important opinion of the Court” during Justice Sullivan’s nearly nineteen-year tenure.<sup>30</sup> *Anglemyer* led off with “a wonderfully clear history of the recent changes in sentencing law.”<sup>31</sup> It then held that under Indiana’s new sentencing scheme—one that eliminated fixed terms—trial courts may impose any sentence within the statutory range, regardless of whether it finds aggravating or mitigating factors.<sup>32</sup> *Anglemyer* has now been cited over 7,000 times in courthouses across the country.<sup>33</sup>

In addition to this seminal case on sentencing, Justice Rucker wrote a key opinion on appellate courts’ constitutional power to revise sentences. Article 7, Section 4 of the Indiana Constitution gives the Indiana Supreme Court authority to revise sentences on appeal,<sup>34</sup> and Article 7, Section 6 does the same for the Court of Appeals.<sup>35</sup> Indiana Appellate Rule 7(B) implements this constitutional

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24. *Id.* at 822.

25. *See generally* 868 N.E.2d 482 (Ind. 2007).

26. 530 U.S. 466 (2000).

27. 542 U.S. 296 (2004).

28. *Anglemyer*, 868 N.E.2d at 486 (quoting *Blakely*, 542 U.S. at 301).

29. *See id.* at 487; *Smylie v. State*, 823 N.E.2d 679 (Ind. 2005).

30. Frank Sullivan, Jr., *Selected Developments in Indiana Criminal Sentencing and Death Penalty Law (1993–2012)*, 49 IND. L. REV. 1349, 1363 (2016).

31. *Id.*

32. *Id.*

33. Hussein, *supra* note 11.

34. IND. CONST. art. 7, § 4.

35. IND. CONST. art. 7, § 6.

power, allowing revision of sentences that are inappropriate in light of the nature of the offense and the character of the offender.<sup>36</sup>

In *Childress v. State*, Justice Rucker explored the scope of that authority.<sup>37</sup> *Childress* rejected Court of Appeals precedent saying that a defendant admits the appropriateness of a sentence by pleading guilty.<sup>38</sup> It held instead that the Indiana Constitution grants “broad permissive authority” that exists “even where the trial court has been meticulous in following the proper procedure in imposing a sentence.”<sup>39</sup>

Justice Rucker’s leading role in shaping Indiana jurisprudence is not, of course, limited to sentencing law. He also penned *Bester v. Lake County Office of Family and Children*,<sup>40</sup> a central case in Indiana’s termination of parental rights law. That opinion, which has been cited nearly 1,000 times, upheld parental rights and family integrity as core Indiana constitutional values and provided practical clarity on the standard of review in termination of parental rights cases.<sup>41</sup>

His opinion in *Ponce v. State*<sup>42</sup> similarly put practical meat on constitutional bones. In *Ponce*, the Court vacated a guilty plea that came after an interpreter’s faulty interpretation stopped Ponce from understanding his rights.<sup>43</sup> As he ended his opinion, Justice Rucker wrote: “Ensuring meaningful access to justice requires that all litigants—including those with limited English proficiency—are equally given the opportunity to participate meaningfully throughout the legal proceedings.”<sup>44</sup>

### C. Influence on His Colleagues and the Next Generation

Justice Rucker’s opinions have shaped Indiana law. But his influence extends far beyond the opinions he wrote himself. Scarce was the opinion that Justice Rucker didn’t improve. He has served with thirty-one appellate judges<sup>45</sup>—and made every one of us better.

My colleagues have already aptly described that influence. Justice Slaughter explained what would occur at conference when it was Justice Rucker’s turn to weigh in on a case. He would “pronounce a pithy pearl of wisdom or insight that hadn’t occurred to the rest of us. And that will settle things.” When Justice

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36. IND. APP. R. 7(B).

37. See generally 848 N.E.2d 1073 (Ind. 2006).

38. *Id.*

39. *Id.* at 1079-80.

40. See 839 N.E.2d 143 (Ind. 2005).

41. See *id.*; Rush, State of the Judiciary 2017, *supra* note 6.

42. 9 N.E.3d 1265 (Ind. 2014).

43. *Id.*

44. *Id.* at 1274.

45. Fatima Hussein, *Supreme Court Justice ends 26-year tenure with Sagamore of the Wabash*, INDYSTAR (May 8, 2017, 4:37 PM), <https://www.indystar.com/story/news/2017/05/08/supreme-court-justice-ends-26-year-tenure-sagamore-wabash/101428258/> [https://perma.cc/PQ6X-SGGT].

Rucker spoke up, “the ratio of wisdom conveyed to words uttered is stratospheric.”

Justice Massa added a list of Justice Rucker’s attributes that we have most admired and appreciated: insight, wisdom, empathy, humanity, elegance, and humility.<sup>46</sup> It is these day-in-and-day-out attributes that we will most miss. As Justice David said, without him on the Court we’ll have to “work a little harder, read a little more, research a little deeper, and think a little longer.”<sup>47</sup>

Of course, Justice Rucker’s influence wasn’t merely on us Justices. Justice Rucker has had—and surely will continue to have—an enduring influence on the next generation of lawyers.

One of my finest memories and most humbling moments is one of Justice Rucker’s final oral arguments, held at his alma mater, Gary Roosevelt High School.<sup>48</sup> The students we encountered at Roosevelt could not have been more impressive. Particularly so were the cadets of its junior ROTC program—the same program that produced Justice Rucker in 1964. They surrounded him as though he were a rock star, and they posed for pictures, knowing they were in the presence of self-made greatness. They saw the possibilities for their own lives that he has helped create.<sup>49</sup> And so a Gary courthouse bearing his name stands in honor of his impact in Lake County and beyond.

Justice Rucker has mentored many law clerks during his time on the Court of Appeals and the Supreme Court. He also, while on the Court of Appeals, created a forerunner to our Indiana Conference for Legal Education Opportunity (ICLEO) program.<sup>50</sup> That program has now trained 500 minority, low income, or educationally disadvantaged students, setting them up for law school and promising legal careers.<sup>51</sup>

Justice Rucker also frequently edified young attorneys with his renowned public speaking skill. To give one example, he delivered his “Shake Up, Show Up, and Speak Up” address to the Indiana State Bar Association’s Leadership Development Academy.<sup>52</sup> This speech was “call and response,” an interactive experience reflecting African-American religious practices and music.<sup>53</sup> Listeners respond to the speaker by, for example, agreeing with a hearty “Amen,” asking

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46. Massa, Robert D. Rucker’s Retirement Ceremony, *supra* note 8.

47. Justice Steven H. David, Comments at Hon. Robert D. Rucker’s Retirement Ceremony (May 8, 2017), available at <https://www.youtube.com/watch?v=8iXUykb5Xeg&feature=youtu.be>.

48. *Supreme Court sets argument at Rucker’s high school*, IND. LAW. (Mar. 1, 2017), <https://www.theindianalawyer.com/articles/42958-supreme-court-sets-argument-at-ruckers-high-school> [<https://perma.cc/58HU-QZVY>].

49. Massa, Robert D. Rucker’s Retirement Ceremony, *supra* note 8.

50. Traci Cosby, Comments at Hon. Robert D. Rucker’s Retirement Ceremony (May 8, 2017), available at <https://www.youtube.com/watch?v=8iXUykb5Xeg&feature=youtu.be>.

51. Indiana Judicial Branch, *Indiana ICLEO: About*, COURTS.IN.GOV, <http://www.in.gov/judiciary/cleo/3535.htm> [<https://perma.cc/C8V7-7UBY>].

52. Justice Robert D. Rucker, Remarks to the ISBA Leadership Development Academy: Shake Up, Show Up and Speak Up (Mar. 26, 2015).

53. *Id.*

for more with a “Well,” and disagreeing with a “Fix it up.”

Justice Rucker’s message in that speech is profound. That message is to “shake up”: be a servant, challenge pernicious stereotypes, and be open to different perspectives and diverse cultures.<sup>54</sup> “Show up”: find a purpose, run things, and make a difference—without excuses.<sup>55</sup> And “speak up”: be an opinion leader, stand for education and civil rights, and eschew apathy.<sup>56</sup> To that call, I respond “Amen.”

### III. AFTER THE COURT

I can’t wait to see what Justice Rucker continues to do for our courts and state, even in retirement. He will serve as a senior judge for the Indiana Court of Appeals. But I’m sure that’s not all. As Justice Rucker said at his retirement ceremony: “You can’t get rid of me that easily.”<sup>57</sup> And we sure wouldn’t want to.

Today, it’s simply premature to talk about Justice Rucker’s legacy—he’s not done yet. But it is fitting to end with the exact words Justice Rucker recently used at a Bar Admissions Ceremony:

To be a priest and possibly a high priest in the temple of justice; to serve at her altar and aid in her administration; to maintain and defend those inalienable rights of life, liberty, and property upon which the safety of society depends; to succor the oppressed and to defend the innocent; to maintain constitutional rights against all violations whether by the executive, legislative, or worse the ruthlessness of an unbridled majority, all this seemed to me to furnish a field worthy of any man’s ambition.<sup>58</sup>

Though he is far too humble to realize it, he was describing himself.

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54. *Id.*

55. *Id.*

56. *Id.*

57. Justice Robert D. Rucker, Comments at Hon. Robert D. Rucker’s Retirement Ceremony (May 8, 2017), available at <https://www.youtube.com/watch?v=8iXUykb5Xeg&feature=youtu.be>.

58. Justice Robert D. Rucker, Remarks at the 2012 Indiana Bar Admission Ceremony (October 15, 2012) (paraphrasing Joseph H. Choate, Speech at the Bench and Bar of England: Farewell to the English Bar (Apr. 14, 1905)).