

## JUSTICE STEVEN H. DAVID: THE RULE OF LAW ALWAYS

CHIEF JUSTICE LORETTA H. RUSH & JOSHUA C. WOODWARD\*

*"I observed him as an officer, a leader, an intellectual, a negotiator, a lawyer, and **always a warrior for the rule of law.**"*<sup>1</sup>

Justice Steven H. David became the 106th Justice of the Indiana Supreme Court on October 18, 2010. At his robing ceremony, his longtime mentor and former employer, Richard Eynon, shared his belief that those in attendance "are smiling and saying, 'Yes, this is a man who will represent all of us without failure.'" <sup>2</sup> Indeed, he has. Justice David has represented all of us during his last twelve years on the Court and, before that, during his distinguished career in the military, private practice, the corporate world, and the trial bench. Throughout that time, as Eynon also observed, Steve David displayed a unique ability to make "people very comfortable by creating laughter and lightening things up, all while being serious and always committed to the rule of law."<sup>3</sup> To Eynon's point, anyone who has encountered Justice David has likely walked away with a smile on their face. But they also assuredly noticed something else: his wristband which states, "The Rule of Law Always."

At the most basic level, the "Rule of Law" is a set of principles, or ideals, for ensuring an orderly and just society. In the United States, upholding the Rule of Law requires treating everyone equally under the law, holding everyone accountable to the same laws, and adhering to clear and fair processes for enforcing those laws. Justice David's favorite definition of the law is "the system of rules of conduct established by the sovereign government of a society to correct wrongs, maintain the stability of political and social authority, and deliver justice."<sup>4</sup> To adhere to that definition, he emphasizes that "you cannot let negative reactions discourage you from doing the right thing; from upholding the Rule of Law no matter how unpopular your decision may be or how it may draw the slings and arrows of critics."<sup>5</sup> But to truly understand Justice David's commitment to the Rule of Law and, importantly, how that commitment has led

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1. Letter from Harry B. Harris Jr., Vice Admiral, U.S. Navy, to Mitch Daniels, Governor of Indiana, in Support of Steve David's Nomination to the Indiana Supreme Court (June 21, 2010) (on file with authors). Harris is a retired Four-Star Admiral and former U.S. Ambassador to South Korea.

2. Michael W. Hoskins, *Justice David Joins the Indiana Supreme Court*, THE IND. LAW. (Oct. 26, 2010), <https://www.theindianalawyer.com/articles/25033-justice-david-joins-the-indiana-supreme-court> [<https://perma.cc/UQL5-RQ2C>].

3. *Id.*

4. Steven H. David, *Dear Mom and Dad*, 24 IND. INT'L & COMPAR. L. REV. 419, 421 (2014).

5. Steven H. David, *The Rule of Law Always*, RES GESTAE, Oct. 2012, at 46.

to the indelible legacy he leaves behind as he begins his next chapter, we first briefly recount a story from the mid-2000s.

Not long after he was elected as Boone County Circuit Court Judge, Steve David—who contemporaneously served in the United States Army Reserve—was called to duty as Chief Defense Counsel at the Guantanamo Bay Detention Camp in Cuba. Then-Chief Justice Randall T. Shepard remembers that Steve was “immediately worried about his existing assignment in Boone County.”<sup>6</sup> “If I go to Cuba,” he said in a call to Chief Justice Shepard, “how will the Circuit Court continue to function for the people of Boone County?”<sup>7</sup> The answer, according to Chief Justice Shepard, was plain enough: the bench and bar and the Supreme Court will make sure that happens, so that the nation could count on his leadership.<sup>8</sup>

Justice David was faced with a formidable assignment that carried international consequences. As Chief Defense Counsel, he had to vigorously fight against, in his own words, the “apparent lack of concern about the lack of fundamental due process afforded the detainees.”<sup>9</sup> Think back to the years following the September 11 attacks: the U.S. government’s position—along with most Americans’ at the time—was that the detainees in Cuba were “unlawful enemy combatants,” and as such, not entitled to constitutional protections.<sup>10</sup> Though the government later changed its position, Justice David was responsible for defending the detainees during a time of extreme uncertainty. While serving in that role, he wrote in a letter to his Boone County colleagues:

I firmly believe that history will look back on this period and neither the wealth of our great nation nor its technological advances will define our legacy. Instead, how this period of history will be looked upon will be whether, in a time of national fear and perceived uncertainty, we followed the Rule of Law, practiced fundamental principles of Due Process, demonstrated to the world that human rights apply to all humans—not just Americans. Did we demonstrate to ourselves that we are that shining city on the hill—that great experiment—and even under most difficult times did we practice what we had been preaching to the world, or did we let fear and the fear of the Rule of Law consume us?<sup>11</sup>

Justice David’s position wasn’t popular, and it received little support from his superiors at the time. But it was right. Notably, former U.S. Navy Vice Admiral Harry B. Harris Jr. later stated that “Colonel David conducted himself with a

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6. E-mail from Randall T. Shepard, former Chief Justice, Ind. Sup. Ct., to Loretta H. Rush, Chief Justice, Ind. Sup. Ct. (on file with authors).

7. *Id.*

8. *Id.*

9. David, *supra* note 4, at 420.

10. *Guantanamo Litigation—History*, LAWFARE, <https://www.lawfareblog.com/guantanamo-litigation-history> [<https://perma.cc/4RUN-TKD4>] (last visited Sept. 1, 2022).

11. David, *supra* note 4, at 420-21.

grace and dignity that belied the significant stress he endured every day.”<sup>12</sup>

When Justice David returned to Indiana, the Supreme Court invited him to give an address at the opening of Indiana’s annual judicial conference. Chief Justice Shepard remembers that address well: “After hearing him describe the experience in Cuba, hundreds of Indiana judges leapt to their feet to give him a standing ovation.”<sup>13</sup> Justice David later reflected that serving as Chief Public Defender was “the most difficult military assignment” he ever had.<sup>14</sup> But just as he embraced that assignment under unprecedented circumstances, he has embraced every endeavor he has set his mind to—both professional and personally.

Indeed, at age 50, Steve David successfully completed the first of now three Ironman triathlons, which includes a 2.4-mile swim, a 112-mile bike ride, and a 26.2-mile run. The Ironman’s mantra is “anything is possible”<sup>15</sup>—time-and-time again, Justice David has exemplified this mentality. In fact, in many ways, he has spent the last twelve years as the Court’s “Ironman.” He “has traveled the State far and wide—many times over—with his enthusiastic message of support for lawyers, the practice of law, and the rule of law,” as Justice Geoffrey G. Slaughter remarks.<sup>16</sup> Not only has Justice David likely incurred more miles than any of his predecessors, but he has also initiated and led numerous court reforms that have enhanced the efficacy of our judicial system. As Justice Frank Sullivan Jr. observes, “the ways in which Justice David has led our state’s bar are too numerous to count.”<sup>17</sup> All the while, he has remained tremendously accessible to all Hoosiers, even regularly sharing with others his personal cellphone number.

Justice Christopher M. Goff sums up Steve David in three words: “Better than advertised.”<sup>18</sup> This is true: he is indeed better than advertised. And thus, it is not possible to adequately convey the type of man he is and the legacy he has built within this article. Nevertheless, we strive to do justice to a man who has spent, as Justice Robert D. Rucker notes, his “entire professional career . . . dedicated to serving the people of the State of Indiana as well as the people of the nation as a whole.”<sup>19</sup> Justice David’s dedication, coupled with his unwavering commitment to the Rule of Law, has resulted in an unprecedented impact on

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12. Letter from Harris Jr., *supra* note 1.

13. E-mail from Randall T. Shephard to Loretta H. Rush, *supra* note 6.

14. Interview by Brent E. Dickson, former Justice and Chief Justice, Ind. Supreme Ct., with Steven H. David, Justice, Ind. Sup. Ct., in Indianapolis, Ind. (Jan. 27, 2021) (on file with authors).

15. See IRONMAN, [https://www.ironman.com/\[https://perma.cc/7VD2-8Q3P\]](https://www.ironman.com/[https://perma.cc/7VD2-8Q3P]) (last visited Oct. 18, 2022).

16. E-mail from Geoffrey G. Slaughter, Justice, Ind. Sup. Ct., to Loretta H. Rush, Chief Justice, Ind. Sup. Ct. (on file with authors).

17. E-mail from Frank Sullivan, Jr., former Justice, Ind. Sup. Ct., to Loretta H. Rush, Chief Justice, Ind. Sup. Ct. (on file with authors).

18. E-mail from Christopher M. Goff, Justice, Ind. Sup. Ct., to Loretta H. Rush, Chief Justice, Ind. Sup. Ct. (on file with authors).

19. E-mail from Robert D. Rucker, former Justice, Ind. Sup. Ct., to Loretta H. Rush, Chief Justice, Ind. Sup. Ct. (on file with authors).

Indiana's legal system. To effectively tell that story, we begin with his time before joining the Court.

#### I. BEFORE JOINING THE COURT<sup>20</sup>

Born in Fort Wayne, Indiana, to his mother, Rosemary, and his father, Shirley—a career Airman—Steve David spent much of his early childhood living on various military bases—from Oklahoma and Washington D.C. to the island of Terceira in the Azores, near Portugal. After his father retired from the Air Force, the family returned to Indiana and settled in Bartholomew County. There, they built a home and two lakes on forty acres his father had previously purchased with his World War II bonus. At an early age, Justice David came to two realizations: (1) he wanted to follow in his father's—and grandfather's—footsteps and serve in the military; and (2) he wanted to be a lawyer because he “wanted to help people.”<sup>21</sup>

When Steve David graduated from Columbus North High School in 1975, his parents were adamant that he attend college. But considering no one in his family had ever gone to college, he “wasn't so sure.”<sup>22</sup> So, he instead thought about becoming an electrician or enlisting directly into the military. He ultimately listened to his parents and attended Murray State University where he graduated magna cum laude as a Distinguished Military Graduate on an ROTC scholarship, which came with a four-year commitment to the Army. Upon graduation in 1979, he was commissioned as a second lieutenant in the U.S. Army Infantry. But prior to serving his commitment, he attended Indiana University Robert H. McKinney School of Law in Indianapolis. Most of all, Justice David “wanted to be an Indiana lawyer.”<sup>23</sup> In fact, his goal at that time was to return to Columbus, Indiana, and work as a trial lawyer for the rest of his life. Fortunately, not only for Indiana but also for our country, fate had other plans.

After graduating from law school in 1982, Justice David spent the next thirty years building a distinguished career in the military, private practice, the corporate world, and the trial bench. As for the military, just a few months after his law-school graduation, he traveled to Fort Benning, Georgia, where he began active-duty service in the U.S. Army Judge Advocate General's Corps, a time that he calls “the greatest experience of my life.”<sup>24</sup> During his illustrious twenty-eight years of military service—four years on active duty and twenty-four years in the reserves—David served as prosecutor, defense counsel, training officer, personnel officer, operations officer, executive officer, and military judge. He also graduated from the Judge Advocate General's Basic and Advanced Officer's

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20. All the details of Justice David's life contained in this Part are derived from the interview of Justice David by former Chief Justice Dickson. Interview by Brent E. Dickson, *supra* note 14.

21. *Id.* Interestingly, the short-running 1970s legal television drama *Petrocelli* “sealed the deal” for his desire to become a lawyer. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

Courses, the Military Judges School, and the Army's Command and General Staff College. And his service included post-September 11 mobilizations in Iraq and Guantanamo Bay. Justice David's dedication to the military earned him numerous awards, including Army Commendation Medals, Meritorious Service Medals, the Frederick Douglas Human Rights Award, and the Defense Superior Service Award—the nation's third highest noncombat medal.

As for civilian life, Steve David's legal career began in Columbus, Indiana, where he worked for two local firms. After a few years in private practice, he accepted a position as corporate counsel for Mayflower Transit, which resulted in him moving from Bartholomew County to Boone County. While serving in that position, a vacancy opened for Boone County Circuit Court Judge. Though he was eventually elected to that position and spent fifteen-plus years as a trial court judge, his path to the bench was not easy. Prior to running for election, Steve David met twice with the county's party chair, but he was turned away each time. Eventually, when the party's selected candidate decided not to run, he met again with the chair and received the green light. But Justice David was told, "You're not going to win, and we're not going to waste any money on you."<sup>25</sup> So, he borrowed several thousand dollars to campaign and, despite the lack of party support, was elected to the bench in 1994.

As a trial court judge, Steve David presided over all types of civil and criminal matters, and he was known as an unwavering supporter of families and juvenile law reforms. He routinely testified before the Indiana General Assembly on legal issues affecting children, and he also received the coveted Robert Kinsey Award as Indiana's most outstanding juvenile court judge. Further, his efforts to improve the availability of mental health services for children led to his recognition by the Indiana chapter of the National Alliance for the Mentally Ill.

Notably, also during Justice David's time on the Boone County bench, he "never thought for a moment" about an appointment to an appellate court.<sup>26</sup> Yet, when Justice Theodore R. Boehm announced his retirement from the Indiana Supreme Court in May 2010, David's wife, Catheryne, encouraged him to apply for the position. He recalls telling Catheryne, "There's no way I'm gonna get selected," but she pushed back and again urged him to apply.<sup>27</sup> So, at Catheryne's insistence and with additional guidance from then-Chief Judge of the Court of Appeals of Indiana John Baker and others, Steve David applied for the vacancy. Just a few months later, in September 2010, Governor Mitch Daniels appointed Steve as Indiana's 106th Indiana Supreme Court Justice, calling him "one of the finest ever to have come to this point."<sup>28</sup> That same month, to pave the way for his appointment, Justice David retired from the military with the rank of Colonel.

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25. *Id.*

26. *Id.*

27. *Id.*

28. INGovernor, *Daniels Selects Judge Steven David to Join Indiana Supreme Court*, YouTube (Sept. 17, 2010), <https://www.youtube.com/watch?v=IU5qgmNXhZg> [<https://perma.cc/UEJ9-WRNE>].

As Justice Sullivan recalls, Steve David, prior to joining the Court, had already “made his mark on Indiana legal history both through the enormous amount of work he had done in our state in so many areas, especially juvenile justice, and the national and international reputation he earned for himself as a military judge and advocate.”<sup>29</sup> But Justice Sullivan also rightly emphasizes that Justice David’s “accomplishments during the last twelve years have exceeded that record.” Just after his appointment to the Court, Justice David expressed his hope that “some aspect of my past is of benefit to the process. This isn’t about me, it’s about the process, about embracing the rule of law.”<sup>30</sup> He turned that hope into reality.

## II. ON THE COURT

There are myriad lenses through which to view Justice David’s lasting contributions to the Court and our state. But before focusing on those contributions, we first share a story that demonstrates an undeniable feature: his infectious sense of humor. Upon his appointment, Justice David joined four justices that had been together for eleven years—one of the longest periods without a new appointee. Then-Chief Justice Shepard fondly recalls the first time the newly formed Court sat around the conference table.<sup>31</sup> Justice Rucker, as the previous newest member of the Court, had voted first for years.<sup>32</sup> So, when Chief Justice Shepard called the name of a case, Justice Rucker began the discussion. He then realized that Justice David was now the newest member, apologized, and turned the floor over to him.<sup>33</sup> Yet, according to Chief Justice Shepard, “the Rucker habit of voting first died hard.”<sup>34</sup> Indeed, on a subsequent conference day, Justice Rucker once again started speaking first.<sup>35</sup> Justice David broke in and said with a smile on his face, “What am I, chopped liver?”<sup>36</sup> Chief Justice Shepard remembers, “We all roared with laughter, and it never happened again.”<sup>37</sup>

Along with Justice David’s sense of humor, what also shone through early on—and for the next twelve years—was his “uncommon enthusiasm for the Rule of Law and the work of the Court” as Justice Brent E. Dickson aptly characterizes.<sup>38</sup> Justice David has selflessly led and initiated numerous projects

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29. E-mail from Frank Sullivan, Jr. to Loretta H. Rush, *supra* note 17.

30. Michael W. Hoskins, *Boone Circuit Judge Steven David to Succeed Retiring Justice Theodore R. Boehm*, IND. LAW. (Sept. 28, 2010), <https://www.theindianalawyer.com/articles/24805-boone-circuit-judge-steven-david-to-succeed-retiring-justice-theodore-r-boehm> [<https://perma.cc/A52Z-MHXN>].

31. See e-mail from Randall T. Shephard to Loretta H. Rush, *supra* note 6.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. Interview by Brent E. Dickson, *supra* note 14.

and committees that have resulted in lasting, necessary court reforms. He has generously spent time with the bench and the bar, giving nearly 600 speeches, conducting numerous legal-education events, mentoring young lawyers, and teaching law students. And he has also established himself as a prolific writer, authoring 166 majority opinions and 50 nonmajority opinions, the latter of which includes 28 opinions dissenting from the Court's decision to deny transfer.<sup>39</sup>

Each of Justice David's herculean contributions share a common thread: they exemplify his dedication to the Rule of Law. A dedication that has sparked an unparalleled capacity to develop—perhaps, at times, restore—public trust in the judiciary through his efforts to advance equal access to justice, build a stronger legal system, and cultivate a robust profession.

#### *A. Advancing Equal Access to Justice*

As the Indiana Constitution established over 200 years ago, our courts must be open to every person for every injury so that citizens' conflicts, whether criminal or civil, are decided in an impartial forum, at an efficient price, with fair outcomes.<sup>40</sup> Justice David's time on the Court reflects his unwavering desire to fulfill this constitutional promise and ensure equal access to justice for all Hoosiers.

While no one is above the law, it is equally true that no one is beneath it. As Justice David once astutely expressed, "Everyone who steps into a courtroom expects his or her voice to be fairly heard, his or her arguments taken seriously, and his or her disputes aired without scorn or slight."<sup>41</sup> Yet, as he further noted, we unfortunately "have a tendency to categorize people based upon their jobs, duties, and positions, instead of being open-minded and trying to learn more and understand more."<sup>42</sup> Steve David has led numerous endeavors to eliminate—or at least minimize—that harmful, but pervasive, tendency. In 2016, for example, he enthusiastically volunteered to serve as the inaugural Chair for the Coalition for Court Access.<sup>43</sup> The Coalition was created to provide a focused structure for Indiana's civil-legal-aid programs leading to improved availability and quality representation for persons of limited means.<sup>44</sup> Under his leadership, the Coalition launched Indiana's first civil legal needs study since 2008, developed a system for vetting and approving court forms for self-represented litigants, hosted

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39. Table of Indiana Supreme Court Opinion Statistics 2010–Present (on file with authors). The number of separate opinions dissenting from the denial of transfer is particularly astounding considering that during Justice David's twelve years on the Court, every other Justice wrote a combined 10 such opinions. And notably, of Justice David's 28 opinions, another Justice joined in 23 of them.

40. See IND. CONST. art 1, § 12.

41. Steven H. David, *Four Things: Socrates & the Indiana Judiciary*, 46 IND. L. REV. 871, 872 (2013).

42. David, *supra* note 4, at 425.

43. Interview by Brent E. Dickson, *supra* note 14.

44. *Id.*

statewide civil-legal-aid conferences, extended legislative-funding sources for pro bono services, implemented court rule changes to strengthen our justice system, and supervised law students working in Indiana's rural communities.<sup>45</sup>

Additionally, Justice David has played a vital role in our judiciary's aspiration to eradicate the unacceptable reality that justice remains elusive to many persons of color. Knowing that to advance a sense of justice in society we must remain informed of and attuned to the needs of all Hoosiers, Justice David has dedicated much of his time and energy to not simply saying we will do better but to doing better. In 2021, for example, he devotedly stepped up to serve as the inaugural chair of the Commission on Equity and Access in the Court System.<sup>46</sup> The Court created the Commission to ensure our judiciary is consistently evaluating and improving systems to equalize access and to improve public faith and confidence in the institution. Aside from chairing the Commission, Justice David has also been at the forefront of leading and convening community forums to tackle issues of race and equity in the legal system. For example, he co-hosted the Indiana State Bar Association's award-winning *Open Conversations* series, which was designed to host candid dialogue about race and culture in the legal landscape.<sup>47</sup> Prior to the series' first installment, Justice David remarked on having to talk about racial justice in 2022: "I'm ashamed . . . We haven't done enough."<sup>48</sup> And he's right. But Justice David has put his words to action, becoming an ally in the fight against racial injustice by consistently promoting "anti-racism, pro-justice for all."<sup>49</sup> He takes on these roles not to receive accolades or commendations, but because he truly believes that injustice to some is injustice to all.

Notably, this sentiment is deeply embedded in his jurisprudence. Perhaps the quintessential example is *Bond v. State* in which Justice David wrote that a detective's statement to Bond—a black man—that he might not receive a fair trial because of his race rendered Bond's resulting confession involuntary.<sup>50</sup> Justice David acknowledged that law enforcement "may use a range of tactics and techniques to persuade suspects to provide incriminating statements."<sup>51</sup> But, as he rightly concluded, to imply that a suspect is unlikely to receive a fair trial simply because of his or her race "is not a police tactic."<sup>52</sup> Rather, it is "an intentional misrepresentation of rights ensconced in the very fabric of our nation's justice system—the rights to a fair trial and an impartial jury, and the right not to be judged by or for the color of your skin."<sup>53</sup> Though the detective employed other proper interrogatory techniques in securing Bond's confession,

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45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. 9 N.E.3d 134, 141 (Ind. 2014).

51. *Id.* at 136.

52. *Id.* at 138.

53. *Id.*



Justice David eloquently wrote “We cannot tacitly countenance the erosion of everything so many have worked so hard to achieve in the realm of racial equality in the justice system—and continue to work to achieve—by disapproving of the statement but finding Bond’s confession nevertheless admissible.”<sup>54</sup> To do so would implicitly condone “a return to days of overt racial discrimination or saying that we still live in those days.”<sup>55</sup> Unquestionably, “neither is acceptable.”<sup>56</sup>

Two other cases, each from the child-welfare arena, further reveal Justice David’s commitment to equity and equality. For example, he authored *In re G.P.* in which the Court held that a trial court violated a mother’s due process rights by failing to appoint counsel upon her request during a CHINS proceeding.<sup>57</sup> Although the mother had waived counsel at an earlier hearing, she changed her mind and was entitled to an appointed attorney by virtue of her indigency—but the trial court did not appoint counsel.<sup>58</sup> And so, when the mother appeared at subsequent hearings without an attorney, Justice David skillfully characterized the mother’s perilous predicament: “a client standing alone in a courtroom where her parenting skills and her child’s care and custody are all being challenged, and everyone else but her either *is* a lawyer or *has* a lawyer.”<sup>59</sup> He then found that the mother, to obtain reversal of the resulting order terminating her parental rights, was not required to show prejudice from the due process violation.<sup>60</sup> He reached this conclusion by recognizing that the termination proceedings were the harm that flowed directly from the mother’s lack of counsel during the CHINS proceedings.<sup>61</sup> And thus, “[t]he undoing of the CHINS process” compelled “the undoing of the TPR process.”<sup>62</sup>

Justice David also, writing for a unanimous Court, reversed an order terminating parental rights in *In re K.E.*, concluding that a parent’s incarceration alone is not a sufficient basis to support termination.<sup>63</sup> There, an incarcerated father’s release date at the time of the termination hearing was still over two years away.<sup>64</sup> But that release date was only one relevant consideration.<sup>65</sup> And Justice David adamantly declined to either “establish a higher burden upon incarcerated parents based upon their possible release dates” or reduce DCS’s burden in termination cases “merely because a parent is incarcerated.”<sup>66</sup> Importantly, the

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54. *Id.* at 141.

55. *Id.* at 139.

56. *Id.*

57. 4 N.E.3d 1158, 1166 (Ind. 2014).

58. *Id.*

59. *Id.* at 1164-65.

60. *Id.* at 1168.

61. *Id.*

62. *Id.*

63. 39 N.E.3d 641, 643-44 (Ind. 2015).

64. *Id.* at 648.

65. *Id.*

66. *Id.*

father had significantly bettered his life through prison programs, he had living arrangements and employment prospects upon release, and he had developed a significant bond with his child through visitations and phone calls.<sup>67</sup> There was also no evidence that delaying termination until the father's release would adversely impact the child.<sup>68</sup> Thus, the evidence was insufficient to support terminating the father's parental rights.<sup>69</sup>

Aside from majority opinions, Justice David has also promoted equality and equity in separate opinions dissenting from the denial of transfer. Two recent examples come to mind. The first is *J.T. v. State*, where he believed the trial court, before ordering parents to pay court costs and fees incurred by their juvenile son, should have inquired into their ability to pay.<sup>70</sup> In reaching that conclusion, he highlighted the reality that, despite “the real or perceived pressure to do what is right for a child, some parents are overwhelmed by the proceedings in juvenile court and agree to payment conditions—regardless of their actual ability to pay—in order to quickly resolve the issue.”<sup>71</sup> And in *Partee v. State*, Justice David felt that a disruptive defendant who had rightfully been removed from the courtroom had a constitutional right to be informed how he could reclaim the right to return and be present.<sup>72</sup> While Justice David commended the trial court “for its restraint and patience in dealing” with difficult defendants, he recognized that they do not “irrevocably forfeit their constitutional right to be present at trial when they engage in disruptive behavior.”<sup>73</sup>

Justice David's chairing the Commission on Equity and Access in the Court System, co-hosting the *Open Conversation* series, and authoring opinions decrying injustice reveal his unwavering conviction that all citizens, regardless of their skin color, education background, socioeconomic status, or belief systems, deserve equal access to justice and equal treatment under the law. As Justice Sullivan highlights, Steve David “has placed the critical issues of diversity, equity, and inclusion front and center in our minds.”<sup>74</sup> We must ensure they remain there.

### *B. Building a Stronger Legal System*

Justice David's commitment to the Rule of Law in advancing equal access to justice has undoubtedly fostered a stronger legal system. But so too has his leadership and jurisprudence in other areas. We echo Justice Mark S. Massa's

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67. *Id.* at 643, 647-49.

68. *Id.* at 651.

69. *Id.* at 652.

70. 116 N.E.3d 459, 459-60 (Ind. 2019) (mem.) (David, J., dissenting to the denial of transfer).

71. *Id.* at 460.

72. 189 N.E.3d 163, 164-65 (Ind. 2022) (mem.) (David, J., dissenting to the denial of transfer).

73. *Id.* at 166.

74. E-mail from Frank Sullivan, Jr. to Loretta H. Rush, *supra* note 17.

observation that “Steve has been intensely dedicated to our Court, but more than that, to a better functioning legal system at every level.”<sup>75</sup>

Indeed, his leadership efforts in areas like technology, specialty courts, jail overcrowding, and juvenile law reforms have led to a more accessible, efficient, and fair legal system. Over a six-year period beginning in 2015, Justice David spent numerous hours co-leading a technology group that ultimately brought our judiciary into the digital age.<sup>76</sup> Those efforts resulted in a tremendous feat by the end of 2021 with each of Indiana’s 92 counties using a single, online case management system. This monumental achievement, which many once thought unattainable, has led to a more responsive and transparent judiciary. He was also instrumental in establishing our Commercial Courts, which have made our state’s economic climate more attractive by offering timely and predictable resolution of complex business disputes. Further, Justice David has led initiatives to research and implement responsible solutions for reducing Indiana’s high incarceration rates and overcrowded jails. For example, he has championed the incorporation of Pretrial & Evidence Based Decision Making in our trial courts, and he chaired the Jail Overcrowding Taskforce.<sup>77</sup> On top of these efforts, he has also served at the forefront of juvenile justice reform by chairing the Youth Justice Oversight Committee and launching—then co-chairing—the Juvenile Detention Alternatives Initiative.<sup>78</sup> His work with both has led to fewer children arrested, locked up, or forced to stand trial in the adult system. There is no question, as recognized in last year’s State of the Judiciary, that Justice David leaves behind “a legacy of an exceptionally stronger judicial system.”<sup>79</sup>

Part of that legacy is his jurisprudence, through which he displays an unwavering commitment to the Rule of Law, which in turn strengthens our legal system. Indeed, his opinions consistently adhere to clear and fair processes for enforcing the law and holding everyone accountable to the same laws. For example, in *Clark v. State*, Justice David concluded that law enforcement failed to comply with the defendant’s Fourth Amendment rights.<sup>80</sup> In that case, two officers arrived at a storage facility to assist the owner in removing a man who was living in one of the units.<sup>81</sup> The officers encountered that man with two others, ordered them to sit on the ground, questioned one of the men—Clark—about the contents of a bag he was carrying, and ultimately searched Clark’s bag and his nearby vehicle.<sup>82</sup> From the bag and vehicle, the

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75. Email from Mark S. Massa, Justice, Ind. Sup. Ct., to Loretta H. Rush, Chief Justice, Ind. Sup. Ct. (on file with authors).

76. Interview by Brent E. Dickson, *supra* note 14.

77. *Id.*

78. *Id.*

79. Loretta H. Rush, Chief Justice, *The 2022 State of the Judiciary Address*, IND. SUP. CT. (Jan. 12, 2022), <https://www.in.gov/courts/supreme/state-of-judiciary/2022/> [https://perma.cc/2EWM-LPQ5].

80. 994 N.E.2d 252, 257 (Ind. 2013).

81. *Id.*

82. *Id.* at 257-58.

officers recovered several grams of methamphetamine and drug-manufacturing materials.<sup>83</sup>

In concluding that the officers' actions violated Clark's Fourth Amendment rights, Justice David first recognized that their encounter with the men "moved past what would be considered 'consensual'" when one of the officers ordered the men to sit on the ground.<sup>84</sup> At that point, "[n]o reasonable person would have believed they were free to simply get up and walk away."<sup>85</sup> Justice David then acknowledged that the officers' actions would have nevertheless been constitutionally permissible if the encounter was an investigatory, or *Terry*, stop supported by reasonable suspicion.<sup>86</sup> But this was not such a case.<sup>87</sup> As Justice David observed, the officers were not at the storage facility to investigate a crime, but to assist the facility's owner in removing the man living in one of the units.<sup>88</sup> To be sure, the officers had every right to assist the owner, but, as Justice David perceptively stated, "Simply because the police are willing and available to be present does not mandate turning an otherwise civil matter into a criminal investigation."<sup>89</sup> Further, the fact that the facility was located "in a high-crime area" was not enough alone to support the reasonable-suspicion requirement.<sup>90</sup> Finding a violation of Clark's Fourth Amendment rights, Justice David then meticulously explained why each piece of incriminating evidence subsequently obtained was inadmissible against Clark as "fruit" of the unlawful seizure.<sup>91</sup> To be sure, *Clark* is a roadmap for upholding the Rule of Law in the search-and-seizure context.

Justice David's opinion in *Barnes v. State*<sup>92</sup> is another example of his dedication to the Rule of Law. There, addressing an issue of first impression, he found that Indiana did not recognize the common-law right to reasonably resist a police officer's unlawful entry into a home.<sup>93</sup> In reaching that conclusion, Justice David explored the historical origins and evolutions of the common-law right, recognizing that most states had abolished it by the 1960s.<sup>94</sup> And he ultimately determined that the right "is against public policy and is incompatible with modern Fourth Amendment jurisprudence."<sup>95</sup> In support, he observed that aggrieved arrestees no longer lacked the means for redress against unlawful police action, that condoning the right to resist unnecessarily escalates the

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83. *Id.* at 258.

84. *Id.* at 263.

85. *Id.*

86. *Id.*; *Terry v. Ohio*, 392 U.S. 1 (1968).

87. *Clark*, 994 N.E.2d at 265.

88. *Id.* at 264.

89. *Id.* at 265.

90. *Id.* at 266.

91. *Id.* at 268-73.

92. 946 N.E.2d 572 (Ind. 2011), *clarified on reh'g*, 953 N.E.2d 473 (Ind.).

93. *Id.* at 575.

94. *Id.* at 576.

95. *Id.*

potential for violence and injury, and that law enforcement can enter a home without a warrant in certain circumstances.<sup>96</sup>

After *Barnes* was handed down, in response to multiple petitions for rehearing, Justice David authored an opinion on rehearing in which he emphasized that the original decision’s “holding does not alter, indeed says nothing, about the statutory and constitutional boundaries of legal entry into a home or any other place.”<sup>97</sup> He then remarked that our legislature “can and does create statutory defenses to the offenses it criminalizes, and the crime of battery against police stands on no different ground.”<sup>98</sup> The General Assembly responded in its next legislative session by codifying a Hoosier’s right “against unlawful intrusion by another individual or a public servant.”<sup>99</sup> Unquestionably, the two *Barnes* opinions were met with public criticism. But Justice David’s historical and legal analysis in each followed by the legislature’s response is a prime example of the Rule of Law at work. As Justice Goff recognizes, “Steve has weathered whatever storm the legal system has thrown at him. And the legal system is better for it.”<sup>100</sup>

Justice David has also exemplified his strident efforts to strengthen Indiana’s legal system through separate opinions dissenting from the denial of transfer. Though, as noted earlier, he has championed technological advancements and availability, he wrote separately in *Gary v. State* because he believed that one such advancement—video conferencing—should not replace a defendant’s right to be physically present during sentencing.<sup>101</sup> And though he served for fifteen-plus years as a trial court judge, Justice David has not shied away from holding judges accountable to the laws they are entrusted to enforce. He asserted, in *Middleton v. State*, that the Court should disavow the trial court’s “perfunctory” advisement of a defendant’s rights before pleading guilty.<sup>102</sup> Instead of directly advising Middleton of his rights, the trial court “merely asked whether Middleton heard the rights read to a prior defendant.”<sup>103</sup> Justice David espoused that “[o]ur trial courts can and must do better” and that the failure to do so in Middleton’s case not only put him in a precarious situation but also reflected “poorly on our system.”<sup>104</sup> Similarly, in *Cruz Rivera v. State*, Justice David expressed concern with the trial court’s failure to comply with a statute requiring that juries be admonished not to discuss the case before being dismissed for lunch.<sup>105</sup> Despite only fourteen minutes having elapsed since the court gave an identical admonishment, Justice David was bothered by the precedent it would set to

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96. *Id.*

97. *Barnes v. State*, 953 N.E.2d 473, 474-75 (Ind. 2011) (opinion on rehearing).

98. *Id.* at 475.

99. IND. CODE § 35-41-3-2 (2022).

100. E-mail from Christopher M. Goff to Loretta H. Rush, *supra* note 18.

101. 116 N.E.3d 455, 455-57 (Ind. 2019) (mem) (David, J., dissenting to the denial of transfer).

102. 178 N.E.3d 1197, 1197 (Ind. 2022) (mem) (David, J., dissenting to the denial of transfer).

103. *Id.*

104. *Id.* at 1198.

105. 134 N.E.3d 386, 386-87 (Ind. 2019) (mem) (David, J., dissenting to the denial of transfer).

condone the lower courts' interpretation—inconsistent with the statutory requirement—that fourteen minutes was “close enough.”<sup>106</sup>

Justice David's various leadership roles and jurisprudence demonstrate how his adherence to the Rule of Law has significantly strengthened Indiana's legal system. Reflecting on their time together on the Court, Justice Massa remarked, “You just don't meet very many people who strive every day to put every ounce of energy into making things better, no matter the task or responsibility.”<sup>107</sup> He continued, emphasizing that Steve's “energy and commitment is irreplaceable. But it's a call and reminder to us all to do more.”<sup>108</sup> To his point, with Justice David leaving the Court, we must do more to promote a vibrant legal system in Indiana. And we must also follow his lead and do more in another area—cultivating a robust legal profession.

### *C. Cultivating a Robust Profession*

Justice David has spent the last twelve years fostering a more robust legal profession in several ways. He has taken on various mentoring and educational responsibilities. And he has further displayed his commitment to the Rule of Law through his jurisprudence by both holding attorneys to a high standard and providing guidance to the bench and the bar.

As co-chair of the Program Committee for the Indiana State Bar Association's Leadership Development Academy (“LDA”), Justice David has been instrumental to LDA's success in mentoring early-career lawyers. LDA takes about twenty lawyers each year and, through five sessions across the state, prepares them to become “the next generation of leaders among Indiana's legal professionals.”<sup>109</sup> Despite his busy schedule and considerable other responsibilities, Steve David consistently not only attends every event each year but actively participates in and leads several sessions, generously sharing his wisdom and lessons learned. His work with LDA embodies Justice Goff's observation that Justice David “makes lawyers want to shine, and if they need a little help, he gives it freely.”<sup>110</sup>

On top of his commitment to LDA, Justice David has further dedicated time to training young lawyers by serving as an adjunct professor at his alma mater, IU McKinney. There, he has taught classes in both the L.L.M. program and the J.D. program.<sup>111</sup> And rarely, if ever, has Justice David turned down a request to speak to or meet with law students. As Justice Sullivan highlights, Steve David's

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106. *Id.* at 387.

107. Email from Mark S. Massa to Loretta H. Rush, *supra* note 75.

108. *Id.*

109. *Leadership Development Academy*, IND. STATE BAR ASS'N, <https://www.inbar.org/page/LDA> [<https://perma.cc/3PCT-GPFD>] (last visited Sept. 1, 2022).

110. E-mail from Christopher M. Goff to Loretta H. Rush, *supra* note 18.

111. See *Faculty & Staff Profile*, Hon. Steven H. David, IU ROBERT H. MCKINNEY SCH. OF L., <https://mckinneylaw.iu.edu/faculty-staff/profile.html?id=481> [<https://perma.cc/8X3M-UVZ4>] (last visited Oct. 20, 2022).

“unfailing devotion and commitment to his law school alma mater has been nothing less than extraordinary.”<sup>112</sup>

From seasoned attorneys to law students, anyone who has crossed paths with Justice David can resonate with Justice Goff’s observation: “people walk away feeling appreciated and inspired.”<sup>113</sup> To that end, Justice David—early in his time on the Court—penned the following Lawyer’s Creed:

I am a LAWYER.  
 I am a protector of the Rule of Law, Due Process, and Fairness.  
 I am an Officer of the Court.  
 I serve my clients with Loyalty, Competency, and Honesty.  
 I am trained in the law. I am a Professional.  
 I live the Rules of Professional Conduct.  
 I will never quit.  
 I am prepared to advance the legacies of John Adams, Belva Lockwood  
 and Macon Allen, with every client I represent.  
 Whatever my core expertise may be, I always reflect  
 Professionalism and Civility.  
 I am a guardian of Justice, Freedom, and the American way of Life.  
 I AM A LAWYER.<sup>114</sup>

To Justice David, this creed is not just words, but a set of ideals for lawyers to strive to live by. Though, as Justice Goff notes, Steve David “makes it safe to be imperfect,” he also “makes you want to do better because he is always striving to do better.”<sup>115</sup>

His jurisprudence reflects a commitment to holding Indiana lawyers to the Lawyers Creed which, in turn, fosters a more robust profession. For example, Justice David authored *Loehrlein v. State*, where the Court held that a juror, who was also an attorney, committed gross misconduct by omitting pertinent information on a juror questionnaire.<sup>116</sup> He emphasized that the lawyer-juror’s conduct was particularly “egregious because she is an attorney who had previously handled some criminal matters and as such, she should have known better.”<sup>117</sup> Notably, *Loehrlein* is the first case we have found—in any jurisdiction—to explicitly acknowledge that lawyers serving as jurors should be held to higher standards.

112. E-mail from Frank Sullivan, Jr. to Loretta H. Rush, *supra* note 17.

113. E-mail from Christopher M. Goff to Loretta H. Rush, *supra* note 18.

114. Steven H. David, Justice, Ind. Sup. Ct., Never Doubt the Oath That You Have Taken. Human Rights Matter If The Rule Of Law Means Anything!, Address at the International Human Rights Symposium 4 (Feb. 25, 2021), <https://mckinneylaw.iu.edu/iiclr/symposium-docs/David2021.pdf> [<https://perma.cc/VC2S-SALB>]. The Creed here is a revised version of Justice David’s original Creed, which was published in October 2012. David, *supra* note 5.

115. E-mail from Christopher M. Goff to Loretta H. Rush, *supra* note 18.

116. 158 N.E.3d 768, 773 (Ind. 2020).

117. *Id.*

Justice David has also promoted accountability by underscoring attorney wrongdoing in separate opinions dissenting from the denial of transfer. In *Shell v. State*, for example, he believed that a prosecutor “seemingly acted in contravention of recognized standards at several points throughout the trial.”<sup>118</sup> And so, “[t]o emphasize the significant obligation that attorneys have to follow the rules and assure that justice is properly administered,” Justice David urged the Court to address whether the attorney’s misconduct was harmless beyond a reasonable doubt.<sup>119</sup> In support of this position, he espoused that “the highest degree of professionalism should continue to govern the behavior of attorneys at all times.”<sup>120</sup> And he aptly observed that “[w]alking the line of permissible and impermissible conduct creates distrust in our legal system, undermines the rights we have sworn to protect, and discourages collegiality.”<sup>121</sup>

Similarly, in *Glover v. State*, Justice David’s separate opinion reflects his desire for the Court to take cases in which it can provide guidance to the bench and the bar.<sup>122</sup> There, he expressed concern that an attorney misrepresented to the trial court during voir dire that he was entitled to briefly present the case to the jury when permitting this “mini opening” is within the court’s discretion.<sup>123</sup> Recognizing that our Court had not yet addressed the proper procedure or scope for mini-opening statements, Justice David felt transfer was warranted to “provide clarity to our trial courts on how to permit and regulate” such statements.<sup>124</sup> Another example is *Cruz Rivera*, mentioned earlier for different reasons, where Justice David felt the Court was passing up an opportunity to “provide guidance on the conflict” between a jury rule and a statute.<sup>125</sup> These opinions, and others, exemplify Justice Slaughter’s observation: “From the Justices’ private conferences to public bench and bar events, Steve David has urged that Supreme Court opinions serve as a how-to guide for trial judges to understand the law and apply it correctly.”<sup>126</sup>

From mentoring young attorneys through LDA, teaching law students, and crafting the Lawyer’s Creed to authoring opinions that both seek to hold attorneys to exacting standards and provide clarity to the bench and bar, it is undeniable that Justice David has nurtured a robust legal profession. As Justice Rucker notes, “His leadership—on and off the court—reflects Justice David’s longstanding commitment to fostering civility and preserving and encouraging fidelity to our system of justice.”<sup>127</sup> Though his efforts will surely be missed, there is no doubt

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118. 26 N.E.3d 1, 2 (Ind. 2015) (mem.) (David, J., dissenting to the denial of transfer).

119. *Id.* at 1.

120. *Id.* at 2.

121. *Id.*

122. 181 N.E.3d 982, 982 (Ind. 2022) (mem.) (David, J., dissenting to the denial of transfer).

123. *Id.*

124. *Id.*

125. 134 N.E.3d 386, 387 (Ind. 2019) (mem.) (David, J., dissenting to the denial of transfer).

126. E-mail from Geoffrey G. Slaughter to Loretta H. Rush, *supra* note 16.

127. E-mail from Robert D. Rucker to Loretta H. Rush, *supra* note 19.



that Steve David will remain committed to these ideals as he begins the next chapter of his illustrious career.

### III. AFTER THE COURT

We hope it is evident that, for the last twelve years, Justice David has been the Indiana Supreme Court's Ironman—consistently proving that “anything is possible.” His fervent dedication to the Rule of Law has advanced equal access to justice for all Hoosiers, strengthened Indiana's legal system, and cultivated a robust profession. There is no question that the impact of his dedication and accompanying contributions will be felt—and deeply admired—for decades to come. Justice David has often said, “You only get one crack at this . . . make a difference.”<sup>128</sup> What a difference he has made.

Though much of this article emphasizes Justice David's lasting contributions, our accounts could not possibly capture his full story. Whether it's serving as a senior judge, continuing to fight against inequality, leading new initiatives, or mentoring young lawyers, Steve David's story is not finished. In fact, soon after this article is submitted, he will once again prove “anything is possible” when he and his wife hike to the peak of Mount Kilimanjaro. Have no fear, Justice David, we will continue your work to ensure “anything is possible” for our courts, our citizens, our state, and our country.

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128. *E.g.*, Interview by Brent E. Dickson, *supra* note 14.