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TRIBUTES

POST-IT NOTES, CHECKLISTS, AND OTHER STUFF!

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After forty years as a lawyer, which included twenty-eight years as an attorney for the Army, and twenty-eight years as a Judicial Officer presiding over 20,000 cases as a trial judge, authoring 166 majority opinions and fifty-one non-majority opinions as a Supreme Court Justice, it is time to leave the Supreme Court to start anew and do something just a bit different. You might wonder what that might be, but I prefer to save that for the end.


Instead, I would like to start by expressing my gratitude and appreciation. First, I want to thank the legal profession in the State of Indiana—the World’s Finest Bench and Bar! Thank you to the Robert H. McKinney School of Law not only for a great legal education, but for a fabulous job of producing so many great Indiana lawyers and judges.

I would also like to thank those that I have practiced with throughout my career as an active-duty soldier in the United States Army and after I returned from my tour of duty to practice law in Bartholomew County before I left to work in the corporate world for six years. And thank you to the many wonderful people in Boone County who helped to elect me as Circuit Court Judge in 1994, 2000 and, again, in 2006. I had the honor and privilege of serving the residents of Boone County with some of the finest people I have ever known. They made me a better lawyer, a better judge, and a much better person.

In 2010, Justice Ted Boehm announced his retirement from the Supreme Court. It may come as no surprise to you that no one reached out and asked me to apply for the vacancy on the Indiana Supreme Court. Indeed, most people I spoke with were very honest, to say the least. Some responses were something like: “Gee, I think you would be a good Supreme Court Justice, but you really don’t have a chance.” There are a lot of different moments when it would have been easy to allow doubt to deter me. But I’ve worked hard at keeping those thoughts at bay by using “post-it’s” and “check-lists.” These are my reminders to myself and things I’ve learned along the course of my life and career. I hope they will help you, too.

Let’s start with the first post-it (which I encourage everyone to have one like this prominently displayed for themselves):

* Thank you to my legal advisor, Colleen M. Morrison, for assisting in writing this article.



*Do not allow
anyone to tell
you what you
can't do*

Don't be afraid to take calculated risks. Don't be afraid to try. You can't win if you don't try. And sometimes you will fail—try anyways. Failure is an event; it is not a person. I applied for the Supreme Court vacancy, and as you all know, I was selected as the 106th Justice. And I have been honored and humbled to have served our State for the past twelve years.

Relatedly, you should always . . .



*Believe in
yourself*

At times, it might feel like you are the only one who does. Remember, this does not give you permission to think you are better than anyone else. But it should remind you to never believe that you are not as good or as deserving as anyone else!

As to the third post-it:



Chances are that if you know me or have heard me speak, you know I am big on creeds. I have many. Create a personal motto and write your own creed. You don't have to share it with anyone but try your best to live it! Take your motto and creed seriously, but do not take yourself seriously.

This next one is especially important in the context of my first post-it . . .

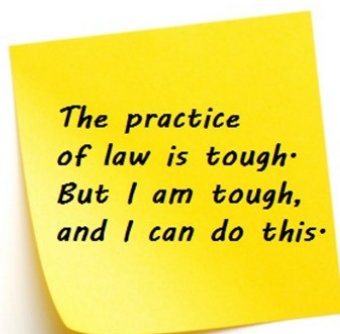


At some point, you will make a “stupid” mistake. You will let yourself down. You might even let others down. You are not perfect—no one is. Try to learn from your failings. Own them. But then move on! Don't live your life looking in your rearview mirror with regret, after regret, after regret. There are no do-overs in life. On occasion, you will have opportunities to write a new, and hopefully better, chapter.

Try to appreciate that life is a learning process. You are either learning or

dying. And if you think you know it all, you are probably really lost. Don't be afraid to have conversations with people who share different opinions from you on a particular matter, even a lot of matters. If you're reluctant, then ask yourself what are you afraid of? If you are committed to your position, then have a respectful (even if spirited) conversation to hear the other person out. If you decide to change your mind, great. If you decide not to, that is great, too. But it is important to have conversations with people who might not think the same way as you, instead of perpetually surrounding yourself with people whose thoughts mirror your own. Being open to someone identifying our mistaken beliefs ultimately makes us better (and more truthful) people.

Now, the fifth post-it note is important whether you are a new or seasoned attorney:



I have found, albeit sometimes out of necessity, that a good laugh at oneself is healthy. Embrace humility. It is not a bad quality trait, but rather a very helpful one. Learn to tell a good story about yourself. Poke fun at yourself, not others. In 1982, I had my very first jury trial in my hometown of Bartholomew County. I represented the plaintiff, and I was prepared (or at least I thought I was). The courtroom was filled with everyone—the parties, attorneys, prospective jurors, all of us—patiently waiting for the Judge to make his entrance. The bailiff said: “All Rise,” and we quickly did so. The Judge approached the bench, sat down, and said: “Be seated.” We all sat in unison. The Judge went on the record and accounted for the case number and the parties present, and then looked at me and said: “Mr. David, are you ready to proceed?” I stood up and stated, loudly and clearly: “Yes *you* are, *we* Honor.” No matter what I tried to do, I could not seem to pull those jumbled words back into my mouth. I could not believe I had done that. Well, some people got a good laugh from this. I didn't at first. But I certainly laugh about it now.

And sometimes, it is just not possible to laugh it off. It might not even make for a good story. You just have to draw on your inner strength and do the very best you can in very difficult moments. Whether it is an ethically challenging issue, a difficult or unpopular cause or client, a complex case, opposing counsel from that fiery place below, or all of the foregoing, always do your best.

In 2007, the United States of America's Secretary of Defense appointed me as the Chief Defense Counsel for the Military Commissions at Guantanamo Bay. It became the military's number one legal mission with all of its permutations of constitutional issues, torture, public sentiment, language barriers, cultural and client issues, delays of justice, and a myriad of other legal and operational issues that would make your eyes water and your head spin. But my task was to lead the charge. To do so, I lived the oath that I had taken as an attorney to ensure the Rule of Law truly meant something. It was the most difficult professional and personal undertaking of my life. I applaud the men and women who have served at Guantanamo Bay, in any capacity. Doing what is right is often very hard and very lonely. Do it anyway. Remember, as a lawyer, you have a special obligation. You took the oath voluntarily because you wanted to be an attorney. Stand tall and be ready. Live the oath.

As to the sixth post-it, throughout various seasons of my life, whether as a soldier, practicing attorney, judge, active member of State and local legal initiatives, professor, and Supreme Court Justice, I've learned that developing and cultivating relationships is critical. The truth is:



During my time in the United States Army, I had the privilege of working with many highly talented men and women who served their country with great distinction, who have never received the credit and accolades that they deserve, and who never undertook any task or followed any orders expecting to receive anything in return. I have also had the privilege to serve with some of the greatest judges and magistrates ever produced from this State. The lessons I learned from these individuals far exceed any of my contributions.

Similarly, I have had the privilege to work with many members of our profession and others on numerous initiatives and causes involving the Indiana State Bar Association, Indiana University Mauer School of Law, Indiana University Robert H. McKinney School of Law, Notre Dame Law School, the Indiana Bar Foundation, the Indianapolis Bar Foundation, the Indianapolis Bar Association, the Marion County Bar Association, the Lake County Bar Association, the Boone County Bar Association, the Brown County Bar Association, the Bartholomew County Bar Association, the Coalition for Court

Access, the ISBA Leadership Academy, the ICLEO program, Odyssey Statewide Implementation, Pre-trial Reform, JDAI, the Commission on Equity and Access, the National Appellate Judges Educational Institute, the National Appellate Judges Conference, the ISBA's nationally recognized award-winning program "Open Conversations on Race and Racism," to name just a few. It has been my great honor to work, and become friends, with so many talented and great people. I am so proud of the work we have done, and while I may have helped out a bit in some of these endeavors, I received far more friendships, mentorships, and opportunities to grow than I contributed. (But don't tell anyone that.)

I have also thoroughly enjoyed my time teaching as a professor at the Indiana University Robert H. McKinney School of Law, the University of Notre Dame, and the University of Indianapolis. I have spent a significant time teaching, mentoring, and learning from the young people of this country, and they are neither lazy nor uncommitted. We should be proud of them. Our future is in great hands.

Last, but certainly not least, my time on the Indiana Supreme Court has been nothing short of tremendous and a fairy tale come true for a kid from Ogilville, Indiana. Just think, I was able to call Chief Justice Loretta H. Rush, former Chief Justice Randall T. Shepard, former Chief Justice Brent E. Dickson, Justice Robert D. Rucker, Justice Frank Sullivan, Jr., Justice Mark S. Massa, Justice Geoffrey G. Slaughter, Justice Christopher M. Goff my colleagues, law partners, and, most importantly, my friends. The State of Indiana is blessed to have magnificent appellate judges and a truly excellent judiciary.

But in order to form these sorts of relationships, keep in mind the following reminder:



I'll admit—there were times when it was tempting to give up. But I prefer to count the number of times I hit the ball out of the park rather than the number of times I swung and missed. No matter what, I have tried to never give up. To overcome adversity, tenacity, patience, perseverance, dedication, and resolve are critical. Sometimes you will suffer setbacks. And while falling down is a part of life, getting up is actually living. If you need it, don't hesitate to seek help. Be honest with yourself. You might feel that you are an island of one, but you are

never alone if you don't want to be. Indiana has a great Judges and Lawyers Assistance Program ("JLAP").¹ Use it. It is available to you for anything, at any time. It is your own concierge service for times when you need help, but you aren't sure where to turn. JLAP is made up of wonderful staff and volunteers that provide confidential and professional services to our State's legal professionals. Use it.

On the topic of reaching out, let's turn to my eighth post-it note:



Life is not intended to be a solo sport. As far as I know, we only have one life on earth. Take advantage of it and actively live it every day, both professionally and personally. Push yourself. Pay it forward. Give a hand up! Mentor! Teach! Volunteer! Seek out experiences. Try a new hobby or perfect an old one. Share your stories. Be the lawyer or judge you want the world to see. Don't worry about what other people are doing or are not doing—DO YOU! Make your parents, your grandparents, your family, your spouse, and your friends proud. When everyone around you is stepping back, step up! When everyone else is running from something, run to it. You will be a better lawyer and a better human being for it.

As you do so, use checklists. Here is a starter checklist for you:

Checklist item number one. Start a "to-do" checklist, but don't let it consume you. And if you are going to keep a checklist of your outstanding to-do's, for God's sake, keep track of your "ta done" list!

Checklist item number two. Consider journaling. Write down your experiences. Sometimes life can seem pretty "ordinary," when it's far from it as you sit and reflect back on the twists and turns of your journey. Start drafting your book, or even books. Who cares if you never complete them, or no one reads what you have written. Write it anyway.

Checklist item number three. Make sure you know the difference between

1. See *Judges & Lawyers Assistance Program*, IN.GOV, <https://www.in.gov/courts/jlaphelps/> [<https://perma.cc/5VW4-DE4U>] (last visited Oct. 20, 2022).

having a check list and merely checking boxes. I like to call those people who just check boxes, “box-checkers.” Box-checkers are consumed by checking boxes, catching others who have missed something on their checklist. They are too afraid or lazy to step outside of their comfort zone to actually help or raise a concern to someone who is *not* a box-checker. They often have clean desks, but empty lives. Frankly, there are too many box-checkers in the world, some of which are lawyers. Don’t be a box-checker. And if you see a box checker, try to help them.

Checklist item number four. Keep your “to-be” list closer to you than your “to-do” list. We—all of us—are often so consumed by our to-do list that we lose track of what is most important: our “to-be” list. That is, to be a better human being, a better lawyer, a better spouse or father or mother or brother or sister, a better teacher or a better learner, a kinder, more tolerant person, and more loving and caring. I am sure you get my point by now. Who we are as people, rather than what we accomplish, is far more important than anything else. Always keep in mind who you would like to be and start taking steps toward that person.

Finally, checklist item number five. Keep a checklist with the following items handy to review quickly before you go to sleep:

- Did I do the best I could today?
- Will I try to do my best tomorrow?
- Was I kind to people today?
- Will I try to do my best to be more kind to people tomorrow?
- Did I express gratitude today?

Lastly, I leave you with the Lawyer’s Creed. I couldn’t find one that I liked so I wrote my own. You can have it if you want it.

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.

Again, thank you to so many people that helped me get to where I am today. I am forever grateful.

P.S. I forgot to tell you about my future plans. I would like to return to doing

what I loved so much. Being a trial court judge is the hardest, most rewarding, up-and-down job there is, but I look forward to serving as a senior judge in the trial courts. I also intend to offer private mediation, arbitration, legal coaching, problem solving, and consulting services. And then . . . I'll just see what else comes along. I wish you all the very best. If you need me, you can reach me at steven.david@courts.in.gov.