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TRIBUTES

THE ORAL HISTORY OF RICHARD L. YOUNG OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

AS TOLD TO JUDGE JOHN DANIEL TINDER (RETIRED) OF THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

This is an excerpt from a transcription of the soon to be published oral history interview of Judge Richard L. Young. The excerpt covers the process Judge Young followed in becoming Vanderburgh Circuit Court Judge and U.S. District Judge for the Southern District of Indiana. The interview was conducted in several sessions over the course of several years.

The questions were asked by Judge John Daniel Tinder, (Retired). Rather than a strict question-and-answer format, the sessions were more like a discussion between old friends. Certain editorial license was used in the transcription of the conversation for accuracy and to elaborate on and clarify certain matters. You can listen to the recordings and decide for yourself how accurately this transcription conveys the gist of the discussions. Judges Young and Tinder will be identified as RLY and JDT.

JDT: You had some fascinating courtroom experiences which gave you a good feel for the courtroom so it sounds like taking the next step to become a judge was a very natural one. Were there things you did to put yourself in a position to become a judge?

RLY: Well, one was being in the courtroom with a lot of trial lawyers every day. As in most larger counties, state trial courts are very busy, especially the criminal courts. I was able to get to know a lot of defense attorneys and prosecutors, and they were able to observe how I conducted myself in the courtroom. So, that experience helped me get the support of the local trial bar to become a judge. I was relatively young when I was appointed to the circuit court. I was 37 years old.

JDT: What year was that?

RLY: 1990.

JDT: How did that appointment come about? I guess then-Circuit Court Judge Miller must have retired?

RLY: Judge Miller retired before his term expired. He had a history of being a strong Democrat. Indiana, at that time, had a Democratic governor, and Judge Miller knew that a Democratic governor would most likely appoint someone with a Democratic background. That was very important to him.

JDT: Just for the record, who was the governor?

RLY: The governor was Evan Bayh. Judge Miller knew of my relationship with Evan Bayh and knew of my Democratic background and was very familiar with how I worked in the courtroom. I also think he was very comfortable with the understanding that, if appointed, I would keep all of his staff. I think that was very important to him. Judge Miller oversaw a vast circuit court operation. He didn't just preside in the Circuit Court. He was responsible for all the community corrections facilities in the county, the Vanderburgh County Probation Department, and the Vanderburgh County Law Library. The circuit court umbrella in Vanderburgh County is large.

JDT: A circuit court judge in Indiana is not the only judge of a court with both civil and criminal jurisdiction, but it also has extensive, what I would call administrative responsibilities. You described some of those. Do you want to elaborate on that?

RLY: The circuit court in every Indiana county is the court established by Indiana's constitution.

There are also superior courts in almost all Indiana counties and they are established by legislation on an as-needed basis. That's why in Marion County you have 35 or so superior court judges and one circuit judge. In Vanderburgh County, there's one circuit judge and seven or eight superior court judges. In Vanderburgh County, there is a specific superior court that handles probate matters, a specific superior court that handles family law and divorce cases, and the superior courts also have other civil litigation as well. The Circuit Court of Vanderburgh County is basically a felony trial court. We had a few civil cases. The thing about having one circuit judge in a county, if lawyers were forum shopping or judge shopping and they wanted to file their civil case with a certain judge, they knew what judge they were going to get in circuit court as opposed to a random selection in most superior courts. But mainly felony trials in circuit court and a lot of administrative responsibilities.

JDT: So when Judge Miller announced his retirement, how much time was left on his term?

RLY: I believe a year remained. I was sworn in on January 1 or 2 in 1990, and his full term would have expired the following January.

JDT: So you would have to run for election to retain the job within a year or so?

RLY: I had to run in the next general election, which would have been in November of 1990.

JDT: And the race would be Republican and Democrat race?

RLY: No. In Vanderburgh County, judicial elections are nonpartisan. I think it is one of two counties in Indiana that have nonpartisan judicial elections.

JDT: Did you have an opponent when you ran for election?

RLY: I did not have an opponent. One of the interesting aspects of a nonpartisan judicial election is that the political parties don't feel an obligation to fill the ticket. And, I like to think that I was doing a good job and members of the bar were happy and satisfied with how I was running the court.

JDT: The lack of opponent certainly reflects that. And then did you run for reelection another time?

RLY: I did six years later and again did not have an opponent. The Evansville Bar Association, at that time, conducted a bar survey on judicial candidates. The EBA sent surveys to all of the attorneys in the Evansville Bar Association for their thoughts and comments. I received fairly good comments and then, of course, the local newspapers picked up on the survey and published it as well.

JDT: Let me back up just a bit. Your initial appointment as circuit judge, was that done through a committee process or how formally were you selected, how did that selection take place?

RLY: There was no selection committee. The governor's office had established an application process. I applied with the governor's office, and two other lawyers from Evansville applied as well. It's interesting that when I went for my interview in the governor's office, the first interview I had was with David Hamilton who was at that time counsel to the governor. Then following that, my next interview was with the governor.

JDT: I will bet it was nice to see some familiar faces.

RLY: Yes, it was very comforting. The other two applicants I'm sure conducted themselves well in the interviews, but I was able to obtain the appointment. I remember getting a call from Governor Bayh prior to his announcing my appointment. I was sitting in my office, and my secretary said Governor Bayh is on the phone. I picked up the phone and said "Governor, how are you?" And he said, "I just wanted to let you know, Rick, that I'm going to appoint you Vanderburgh Circuit Judge." So I expressed my gratitude and surprise, and he said, "Rick, this is really no surprise, is it?"

JDT: That's great.

RLY: So, courtroom experience, political work, and getting to know folks through politics and campaigns was helpful to me in securing the appointments that I've had, and this is the advice that I've given to young lawyers who have asked me how I got to where I am in my career. I always advise them, if they're interested, to become involved in your community, get involved in the political campaigns of people you can support, become familiar with courtrooms and trial procedures, and you never know what will happen in the future. It's been said, "Luck is what happens when preparation meets opportunity."

JDT: So, if I recall you spent about eight years in the circuit court. Tell us what you would like about your experiences, your responsibilities, and the various things you did as circuit judge.

RLY: Well, we've gone over that some in one of our previous sessions in terms of administrative duties for various departments. It was a very, very busy trial court. As a matter of fact, one year, 1991, I and the magistrate judge in circuit court tried 79 jury trials.

JDT: In one year?

RLY: In one year, yes. I have a newspaper article hanging on my office wall with the headline, "The Vanderburgh Circuit Court tries more jury trials than any court in the state."

JDT: That is remarkable.

RLY: We would usually start a trial on Monday morning and go to the jury usually on Tuesday evening and then start another one on Wednesday. The majority of the cases were criminal prosecutions, and as you well know from your years trying cases as a public defender and prosecutor, some of those cases are fairly simple and they can be done relatively quickly. I believe I tried 54 cases, and the magistrate judge tried the rest. Most of them were criminal trials. We had a few civil trials, but as I say, most of our trials were criminal prosecutions.

JDT: Do you have a "biggest hits" list of cases that you had in the circuit court, cases that you felt were of significance and things that you would like to mention to your listeners and readers.

RLY: Cases that I've tried that I can remember are the more sensational murder-homicide cases. One involved an Evansville police officer who was married, had children but was carrying on an affair. It was alleged that he was having problems with the woman he was having an affair with and ultimately set fire to her house killing her and her dog. The evidence was fascinating and pointed to the officer's guilt, but as in many trials, there are certain bits of evidence that grab your attention. In this case, there were witnesses who were walking in the

neighborhood and first saw smoke in the sky, which allowed the prosecution to pinpoint pretty well what time the fire started. Of course, police dispatch had records about where this police officer reported he was at the time, but an interesting piece of evidence in the case was obtained from an ATM machine. Across the street and about a block away from the victim's home was a bank branch with an ATM in the drive-up. As we all know, there are cameras on these ATM machines, and that machine's camera was on when the defendant drove away from the house in his police vehicle. The video that was obtained had a time stamp on it. It just completely destroyed his alibi defense that he was nowhere in the area at the time the witnesses observed the smoke. It was a great piece of police work in which they left no stone unturned. They surveyed all the neighbors and businesses around the scene, asking if they had cameras or saw anything that was out of the ordinary during that time. I don't know if he would have been found guilty without the ATM evidence that put him at the scene or put his car at the scene. He was ultimately convicted.

JDT: Any other particular cases you want to mention?

RLY: I had two or three other death penalty cases during my years as circuit court judge and other fascinating trials as well. Certainly there were many run-of-the-mill trials, really too many to mention.

JDT: It was a fabulous experience and obviously very helpful experience for the work that you do today on the district court. Let me ask you a little bit in addition to your administrative duties as circuit judge, were you also a board member of certain boards in the community or have other responsibilities outside of the court?

RLY: Not really. Once I became judge, I let my civic board work lapse. I had enough on my plate. And as I indicated, I was chairman of the community corrections advisory board, which ran the local work release facilities. The work release facilities had 300 beds and a staff of probably 50 guards and administrative staff. Also, I was overseeing the probation department, working with the county council on budget, and other administrative duties. So I didn't have a whole lot of time to continue to be involved with community boards. And as you know, when you're a judge, you are limited in terms of participation in community activities. As a judge, you can't be involved in fundraising or have your name associated with an organization that might help with fundraising or other support.

JDT: Did you have any interaction with District Court Judge Gene Brooks while you were on the Circuit Court?

RLY: I did. I probably appeared before Gene three or four times as a defense lawyer when he was on the bench. I didn't have a whole lot of interaction with him until he was getting close to retirement. Gene had a history of being a strong Democrat, very similar to Judge Miller. Gene was previously the elected

prosecutor in Posey County, which is adjacent to Vanderburgh County. It's interesting as well, Gene was a very close friend of Senator Birch Bayh. In their younger years I believe they played semi-pro softball together

JDT: If I recall correctly, Gene was the pitcher and Senator Bayh was the catcher.

RLY: I believe that's correct. They went back a long way. As I mentioned, Gene was formally the prosecutor in Posey County and then became a bankruptcy referee in the Southern District of Indiana, and then he was appointed bankruptcy judge prior to his becoming the district judge sitting in Evansville. He was put forth for nomination for district judge by Senator Bayh who I believe was the senior senator in Indiana at the time. Gene was appointed district judge by President Carter. This was a new judgeship in the Southern District of Indiana due to a congressional judgeship bill that was finally passed in 1978 or 1979 creating many new district judgeships and appellate judgeships around the country. So this wasn't a vacancy. This was a new judgeship, and Gene was appointed in 1979. Gene was well thought of in our community, and as you well know, Judge Tinder, he was quite a character.

JDT: Big personality!

RLY: Big personality, he never met a stranger and could carry on a conversation with anybody about any subject. He was just a pleasant guy to be around. And he liked to smoke a cigar with a shot and a beer chaser.

JDT: I recall visiting Evansville a time or two where we would go to lunch. Gene and I while walking to lunch, cars would pull over to the side of the street and wave him down to talk to him. Did Judge Brooks participate in bar activities or things of that nature where you would have interaction with him?

RLY: Gene was from Posey county and wasn't all that involved with the Evansville Bar Association. When I was circuit judge, I had gone through the bar association chairs and eventually was the first judge ever to be president of the Evansville Bar Association, but I don't recall Gene being involved in bar association activities. However, he did become involved with the Inns of Court, which is a group of older lawyers, mid-level experienced lawyers, and new lawyers who gather together on occasion to make presentations and discuss the practice of law and what's new in the law and new cases and so on. He was instrumental in establishing the Inns of Court in Vanderburgh County, and it eventually became known as The Brooks Inn of Court, and so that's the involvement with local lawyers that I recall about Gene Brooks.

JDT: Well, how did you first learn there was going to be an opening on the federal bench in Evansville?

RLY: Judge Brooks told me.

JDT: He pulled you aside and let you know?

RLY: I can't recall where we were, whether I was over in the federal building or we were somewhere else, but he indicated to me he was planning on retiring in a year or so.

JDT: So you had the impression that he was telling you this on sort of an inside basis so you would know to get your ducks in order?

RLY: That was my impression. And I believe he also shared his retirement thoughts with Governor Bayh and Governor Bayh's chief of staff, Bill Moreau.

JDT: So you got this heads up that there was going to be an opening on the district court in Evansville.
I take it you were interested?

RLY: I was interested. As a matter of fact, as we discussed, the responsibilities of the Vanderburgh Circuit Court judge, after eight years, I must admit I was getting a little weary of constantly trying cases and tending to all of the administrative duties.

JDT: Was this part of a long-term plan?

RLY: No. As I said, I enjoyed my work as circuit judge and would have continued to do it, although it was a heavy workload. But I had never thought of being the United States district judge, and as you well know, most people don't plan to be a federal judge. It just happens when, as they say, the stars are lined up right.

JDT: Other than Gene Brooks, had you met any other members of the district court prior to your nomination?

RLY: I believe I had met Judge Barker. We both served on a committee that was revamping the Indiana Rules of Evidence. I believe I met her at a committee meeting at the Bloomington law school, but that would be the only time. Of course, I knew Judge David Hamilton from our early days in politics and campaign litigation.

JDT: So, you get word that Gene is going to retire and you're interested in the position. What did you do to get yourself in the position of being the nominee?

RLY: I recall I discussed this with Evan's chief of staff, Bill Moreau, who was a long time friend from Rose and my days in Washington. Bill worked for Senator Birch Bayh when we were in Washington, and we met on the congressional softball field. Bill knew that Rose and I had been helpful in Birch and Evan's campaigns. So, I made contact with Bill and let him know that I would have an interest in that nomination.

JDT: Was there a formal application process or a committee?

RLY: No. My understanding is that when Evan Bayh made nominations or appointments, he wanted to appoint or nominate someone he knew, their backgrounds, their capabilities, which was all very similar to when David Hamilton was appointed a few years before me. David was obviously very close to Governor Bayh as his counsel, and I don't believe there was an application process for his nomination either.

JDT: Of course, the formal nomination is made by the President of the United States who at that time was Bill Clinton, but Governor Evan Bayh was the highest Democratic-elected official in the state and certainly was the dominant force in the Indiana Democratic party.

RLY: Yes, he was. At that time in Indiana, there were two Republican U.S. senators, Richard Lugar and Dan Coats. So, Evan was the one the president looked to for suggested names for a nomination. I was fortunate to have my name sent to President Clinton. Now, what is interesting about all of this is that Evan was going out of office as governor in January 1997. I believe he sent his letter to President Clinton recommending my nomination in November or December of 1996. He was out of office in January. Although he was planning on running for U.S. Senate, he was no longer the highest ranking Democrat in the state. Actually, during 1997, he was practicing law in Indianapolis and preparing for his Senate campaign in 1998. So, the White House then said you need to get the support of the now-highest ranking Democrat in the state, which was Congressman Lee Hamilton, David Hamilton's uncle. So, I touched base with Congressman Hamilton and updated him on what was going on, and I believe he had discussions with Evan Bayh and newly elected Democratic Governor Frank O'Bannon as well. Congressman Hamilton then took the lead from there.

JDT: So Governor Bayh's letter would have gone out in November or December of what year?

RLY: 1996.

JDT: How did you hear about Governor Bayh's letter and did you get a copy of it?

RLY: His counsel at the time, Matt Gutwein, also a friend of mine, called to advise me that the governor had sent a letter to the president recommending my nomination. And, yes, I did receive a copy of the letter.

JDT: What factors do you feel led to your nomination?

RLY: Well, I think a major factor was I had seven years of judicial experience at that time. I think the governor put great weight on to that experience. I had a good relationship and a long-time friendship with the governor. I historically was a

Democrat, and I believe Governor Bayh thought I had the capability of doing a job he would be proud of. So, I think my judicial experience helped a great deal and also gave the members of the local bar a comfort level, knowing that I could do the job even though I was relatively young. I would have been 44 or 45 at that time, not as young as you when you went on the federal bench, but certainly young for a federal judge.

JDT: So you mentioned in the appointment/nomination process a conversation you had with Congressman Hamilton. Were there any bumps in the road in the nomination process? How did that process go?

RLY: Yes. There was a local attorney in a county adjacent to Vanderburgh County who was interested in appointment as well. He was very politically connected in southern Indiana. But he didn't have the judicial experience I had, and he didn't have the long-term friendship with Evan Bayh that I had.

JDT: You obviously had competition for it, but it turned out your way. Tell us about your confirmation.

RLY: Looking back, the confirmation hearing was sort of anti-climactic. As you well know, the President's staff and the Justice Department staff prepare you for these hearings and provide a lot of materials for review such as stacks of paper containing questions asked by senators at previous hearings. You review all of that material preparing for tough questions by the senators. Also, you need to be up to speed on recent cases from the United States Supreme Court and various courts of appeal.

JDT: The two U.S. senators from Indiana were Senators Lugar and Coats. Did either of them appear with you at your confirmation hearing?

RLY: No. Senator Lugar and Senator Coats sent statements in support that were read into the committee record. However, I did have someone appear with me who was very well known to the committee, former Senator Birch Bayh. I had called Senator Bayh when I knew of my hearing date and asked if he would be so kind to sit with me, and he indicated he would be happy to do so.

JDT: Senator Bayh spent many years as a member of the Judiciary Committee.

RLY: Yes, he did. The Senate in 1998 was controlled by Republicans, and Orrin Hatch, a Senator from Utah, was the chairman. Prior to the hearing beginning, I was sitting with my family in the hearing room with Senator Bayh, and Senator Hatch walks in and sees Senator Bayh and comes over and warmly greets him and welcomed him to the hearing. After that, I felt pretty good of my chances of making it through the committee. At my hearing there were also two court of appeals nominees on the schedule, and I think there were three or four U.S. district judge nominees as well. The Court of Appeals nominees were questioned first. Their questioning went on for quite sometime and senators come in and out

of the hearing room. By the time the questioning got to the district nominees, many of the senators had moved on to other hearings or matters.

I recall there were two or three senators left when I was questioned. I was questioned by Senator Strom Thurmond and Senator Dick Durbin. The question asked by Senator Thurmond was something along the lines of, "Now, Judge Young, if you are confirmed as a district judge, will you follow the precedents of the Supreme Court of the United States?" I responded, "Yes, of course, I will. That is the law of the land." Senator Thurmond then responded, "Well, you're going to be a fine judge." And that was the only question I received from Senator Thurmond. Senator Durbin asked me a question regarding a recent Supreme Court case, which I can't recall at this time what that case was about, but I was able to handle the question quite easily. And my questioning then concluded.

JDT: Obviously, you were voted favorably out of committee and sent to the Senate floor. As the nomination was set for a vote, how did you feel, comfortable, anxious or something in between?

RLY: I felt pretty comfortable about it. I had worked closely with Senator Lugar's chief of staff, Marty Morris, who was extremely helpful to me going through this process. I had flown out to Washington at Marty's request to meet with Senator Lugar in his Capitol hideaway office. Senator Lugar and I had a wonderful conversation, and he told me, "This is President Clinton's appointment, and my job is to determine if you're qualified. If I believe you're qualified, I will help you the best I can." Senator Lugar kept his word. He instructed his staff to help me through the process, and they did. Marty Morris was very close with Senator Hatch's judiciary committee staff and was able to get my name moved up in the queue a little bit. He was very, very helpful.

JDT: The Republicans controlled the Senate at that time. Did your nomination get a vote?

RLY: Yes, I received a roll call vote. One of our good friends from our Washington days is Kevin Kayes, who at that time worked in the Senate Parliamentarian's office. So he knew ahead of time what was going to be on the executive calendar for votes. Kevin contacted me to say, "I think your vote is coming up and you are on the calendar." And the vote came about, it was 81 in favor and 0 against. A few senators were absent.

JDT: Terrific! Those are numbers you don't hear these days.

RLY: That's true. It was a different time in the United States Senate in terms of voting on nominations.

JDT: Well, I bet there was a huge sigh of relief in Evansville that day.

RLY: There was, we had a nice celebration that night.

JDT: How long after you were confirmed by the Senate did you take the oath of office as district judge?

RLY: I believe it was two or three weeks. Once my commission was signed by President Clinton and delivered to me, Judge Barker, who was Chief Judge at the time, and Judge Larry McKinney came to Evansville and Chief Judge Barker administered the oath in an informal setting, actually the courtroom in Evansville. I was then a United States district judge.

JDT: So it was a quick transition for you, off the circuit court, directly to the district court.

RLY: Yes. The courthouses are across the street from each other. On the weekend after I took my oath, I moved my belongings from the circuit court chambers to the district court chambers.
