

## JUDGE YOUNG—AN APPRECIATION

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It is perhaps a perilous task for a practicing lawyer to write an appreciation of a judge before whom the lawyer still practices. However, as a lawyer who has appeared before Judge Young in many cases for many years and has both lost and won cases in his courtroom, I believe that I can be both objective and properly laudatory, as Judge Young is entitled to praise from the Bar.

Lawyers tend to try to obscure our work in ways that make it appear incomprehensible to those outside the profession. I realized this the first time I heard a professor in law school use the term *vel non*, which required me, in a pre-computer age, to run to the library to look it up, only to discover it means “or not.” However, at our core we are problem solvers (although some would label us problem causers). Viewed through this simple lens, a judge is *the* problem solver. And how he or she goes about the business of solving problems is how we should evaluate them. A judge who can appear to solve difficult problems simply is to be honored. Judge Young is one of those judges.

The fact that Judge Young’s opinions are crisp, understandable, and transparent glosses over the work that goes into taking complex problems, breaking them down, solving them, and then explaining it all in a way that is easily understood. That which appears effortless is rarely simple. But Judge Young makes that which is difficult appear easy. That can be seen by reviewing some of his published opinions in cases that our office has been involved in over the years.

Although it is no longer the contentious matter that it once was, a few years ago there was no issue more controversial than same-sex marriage. In *Baskin v. Bogan*,<sup>1</sup> then-Chief Judge Young found Indiana’s statutory ban on same-sex marriage to be unconstitutional. The decision addresses an issue that was roiling society at the time, and in simple and easily understood language Judge Young explained why the prohibition was unconstitutional. He then presciently noted that:

[i]t is clear that the fundamental right to marry shall not be deprived to some individuals based solely on the person they choose to love. In time, Americans will look at the marriage of couples such as Plaintiffs, and refer to it simply as a marriage—not a same-sex marriage. These couples, when gender and sexual orientation are taken away, are in all respects like the family down the street. The Constitution demands that we treat them as such.<sup>2</sup>

The Seventh Circuit quickly affirmed the decision.<sup>3</sup>

Another case where Judge Young wrestled with a complex issue, fraught with societal consequences, albeit not one that was in the news in the same way as

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1. 12 F. Supp. 3d 1144 (S.D. Ind. 2014), *aff’d*, 766 F.3d 648 (7th Cir. 2014).

2. *Id.* at 1163.

3. 766 F.3d 648 (7th Cir. 2014).

same-sex marriage, was *Common Cause Indiana v. Indiana Secretary of State*.<sup>4</sup> The case dealt with the odd election method of superior court judges in Marion County, unique in Indiana, where Democrats and Republicans were allowed by statute to nominate exactly one-half of the judicial positions available so that when citizens went to vote they were presented with a list of nominees equal to the number of judicial positions available. Judge Young was able to succinctly explain the voting system while tersely illustrating the problem with it: “[a]ll each candidate needs to win is one vote.”<sup>5</sup> To resolve the question of whether this was constitutional, Judge Young had to plunge into the difficult and at times Byzantine legal thicket that is the constitutional jurisprudence surrounding elections and the right to vote. Again, the Judge’s decision deconstructs a difficult question in a manner that is readily understandable, ultimately finding that the statute was unconstitutional.<sup>6</sup>

However, in assessing a trial judge it is a mistake to focus solely on their opinions and orders because the trial judge’s work consists of much more than reported decisions. The trial judge’s role as problem solver necessarily entails involvement in cases that persons outside of the case may never know about.

To this point, the essence of Judge Young as a problem solver can be seen in a very important case that never made it to a reported decision. In 1979, a class action was filed concerning conditions at the Vanderburgh County Jail in a case originally entitled *Vanderburgh County Jail Inmates v. DeGroote* (No. 3:79-66). Litigation activity in the case had ceased with settlement agreements. However, by the time our office became involved and revived the case in 2000, the jail, with a rated capacity of 256, was housing more than 400 prisoners with all the problems that occur in overcrowded penal facilities.

The case was originally assigned to Judge Brooks. However, when the case sprang to life again, it was assigned to Judge Young who was undoubtedly aware of the many deficiencies in the then-existing jail, having been the Vanderburgh Circuit Court judge for eight years. He also recognized that solving the problem of the jail was ultimately not just, or even primarily, a legal problem. It appeared clear, at least to me, that everyone involved in the case recognized that the jail was deficient in many respects and that the existing facility could not be rehabilitated in any meaningful way. However, due to constraints in federal law, Judge Young could not order that a new jail be built even if he had believed that this was the only possible solution. The problem to be solved, although technically a legal one, was actually a political one as the entities responsible for decision making in the county, the county council and county commissioners, had to commit to solving the problem. Judge Young was absolutely instrumental in pushing and steering the parties to a resolution. No trials were held. No briefs

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4. 60 F. Supp. 3d 982 (S.D. Ind. 2014), *aff’d*, 800 F.3d 913 (7th Cir. 2015).

5. *Id.* at 986.

6. *Id.* at 993. I want to stress that the same clarity of decision-making is present in cases where Judge Young ruled against clients represented by our office. *See, e.g., Ashby v. Warrick Co. Sch. Corp.*, No. 3:16-cv-00190-RLY-MPB, 2018 WL 746903 (S.D. Ind. Feb. 7, 2018), *aff’d*, 908 F.3d 255 (7th Cir. 2018).

were filed. Instead, there was just steady pressure from Judge Young, aided by Magistrate Judge Hussmann, to push the parties to come to a solution. As I note, there is nothing in the case reports that documents the Judge's efforts. There is not a lengthy decision, eloquently setting out principles of law with a fair amount of Latin sprinkled in. Instead, there was a judge working to solve a problem with all the tools at his disposal, which is what good judges do. Finally, in 2006, the new jail opened and the case was dismissed. An extremely difficult problem that implicated fundamentally important constitutional rights was resolved.

Again, I feel compelled after all this to repeat that Judge Young has ruled against us at that ACLU. It is a measure of my respect for him to add that I am extremely happy that he intends to continue taking cases as a Senior Judge so that he can have the opportunity to rule for and against our clients in the future.