

**COOK COUNTY COURT ORAL HISTORY PROJECT**

Judge Richard J. Fitzgerald

Interview Date: October 14, 2006

Interviewers: Elizabeth Trantowski and Melisa Davis  
HIST 483: Oral History: Method and Practice

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### Judge Richard Fitzgerald Interview Abstract

This interview was conducted as part of the Cook County Oral History Project supervised by Dr. Christopher Manning of Loyola University Chicago. The interviews were conducted by graduate students for the course, "Oral History – Methods and Practice." The goal of the project is to provide insight into the workings of the judiciary by conducting a series of interviews with both retired and sitting Cook County Circuit Court judges.

At the time of the interview, Judge Richard Fitzgerald had been retired for 14 years (he retired in 1991), having served as a judge in the Cook County Court System for 27 years, 15 years as Presiding Judge in the Criminal Court Division. In the interview, Fitzgerald discusses his childhood, as well as his college education and law school experiences. The majority of the interview is focused specifically on the mechanics of how he became a judge, and his career: his early days in private practice and as a city attorney; his experiences while briefly sitting in the Divorce Court Division; his years in the Criminal Courts as a trial judge; and his seventeen-year tenure as Presiding Judge of the Cook County Criminal Courts. Fitzgerald's accomplishments during his tenure as Presiding Judge include the creation of a sentencing guideline matrix (used as a model for the State of Illinois mandatory sentencing guidelines subsequently enacted); a repeat offenders program that significantly reduced the backlog of pending trials for career criminals; and the installation of a computer program for case assignment. General thematic issues include: personal motivation, politics, corruption, the effect of the so-called "War On Drugs" on the criminal courts system, and the death penalty. Fitzgerald also recounts many colorful anecdotes from his years on the bench.

## Biography

Judge Richard Fitzgerald was born in January 1914 in Hammond, Indiana. Fitzgerald lived in Hammond for the first 12 years of his life until his family moved across the state line to Calumet City, Illinois. In Calumet City Fitzgerald continued his education at St. Victor's Catholic School and then at Thornton Fractional High School. Upon graduation from high school, Fitzgerald earned an athletic scholarship to Saint Louis University. At Saint Louis University, Fitzgerald played football while he completed his studies in pre-law and law. After finishing his schooling in Saint Louis, he returned to the Chicago area to care for his ailing father and then take the Illinois Bar exam. However, before he could begin practicing law, World War II broke out and he enlisted in the United States Navy to work as a communication officer.

After the war, Judge Fitzgerald started his law career as a city attorney for Calumet City and Lemont while he maintained a private practice. About twenty years later, he ran for election for the Cook County Circuit Court. Fitzgerald won his first election unopposed and did not lose an election thereafter. For his first ten years on the bench, he heard cases in the criminal division, and he then earned his appointment as presiding judge. Fitzgerald served as presiding judge of the criminal division for the next 17 years until his retirement in 1991.

After retiring from the bench, Judge Fitzgerald worked briefly at Winston & Strawn, an international law firm based in Chicago, retiring from the firm in 1993. He currently lives in South Holland, Illinois.

## Introduction

Two Loyola University Chicago graduate students, Liz Trantowski and Lisa Davis, interviewed Judge Richard Fitzgerald in his home in South Holland, Illinois, for approximately three hours on Saturday, October 14, 2006. They were accompanied by Judge Ted Swain.

In the transcript, the speakers are identified by their initials:

LT: Liz Trantowski

LD: Lisa Davis

RF: Richard Fitzgerald

TS: Ted Swain

As the digital recorder was turned on and off several times during the course of the interview, there are three audio files. The transcript indicates the beginning and end of each audio file as the time stamps correspond to those particular audio files.

Before the interview began, Liz Trantowski gathered biographical information and explained the legal forms to Judge Fitzgerald. The transcript does not include this conversation as the reader may find this information on the biographical information sheet.

For editing purposes, the transcribers used (...) to indicate that the speaker had trailed off or did not finish the sentence. Also, the transcribers used hyphens (--) to show the speaker being interrupted and when the speaker finished his or her thought after the interruption.

(4:35)

LT: The first question I have is where did you grow up? And you mentioned that you were born in Hammond, Indiana. Did you grow up there as well?

RF: I was in Hammond until I was about oh, maybe 12 years old. And my family moved out from Chicago. My uncle was the owner of the Hammond Distillery. And so my father came out to Hammond from Chicago. And then I left Hammond, came over to Calumet City. So I lived in Calumet City practically most of my life. Went to school in Calumet City. And that was about it. And I moved here after I got married and moved to Calumet City and then over to South Holland.

(5:34)

LT: Okay. So you said that you lived in Calumet City really most of your life, did you live in the same house in Calumet City when you were a young man?

RF: My family, yeah.

LT: Your family?

RF: Right next to the golf course.

LT: Okay.

RF: So yeah, did a lot of caddying.

(5:53)

LT: What was your family like? You said your dad worked for your uncle.

RF: He worked at the Hammond Distillery.

LT: Mmm-hmm.

RF: He ended up as a bailiff in the courts in Chicago. My mother was very active in women's clubs and so forth. I had two brothers. One went to Purdue, and the other went to Illinois. My son went to Illinois and played football at the, at Illinois. Went to the Rose Bowl.

LT: Oh, wow. (laughs)

RF: So we had quite a fiesta out there in California.

LT: Where...? Oh, I'm sorry, continue.

RF: And Illinois happened to win, thank God.

LT: Yeah!

(Laughter)

(6:38)

TS: Which year was that? They've only been there three times.

RF: Let's see, that'd be '64. God, I don't know, '66.

TS: It was something like... Yeah, I remember...

RF: '68...

TS: Somewhere in the '60s.

RF: Dates don't mean a thing to me anymore. When you hit 92, hell—

(Laughter)

RF: --you don't even remember your own name.

LT: Right.

(Laughter)

(7:00)

LT: You said that your mother was involved in a lot of women's clubs. Do you remember any of the names of them that she was involved in?

RF: One was the Hammond Women's Club. And I guess that was the biggest one. She was pretty active with those people.

(7:16)

LT: And your brothers, you mentioned those universities that they went to, were your brothers older or younger than you?

RF: I had one older brother who went to Purdue.

LT: Okay.

RF: He was an engineer. Ended up working for DuPont. My younger brother went to as I say, he went to Illinois, Washington, St. Louis, he was all over.

LT: He was all over?

RF: He was a renegade. Ended up out in California. Went into the Marine Corps, and they kicked him out.

(Laughter)

RF: If you can't make your way in the Marine Corps, by God, you had to be a real renegade.

(Laughter)

RF: He was a character. But, he was a good guy, though.

(8:04)

LD: In the neighborhood where... what was the neighborhood like where you grew up? You said you were next to a golf course. Was it middle class?

RF: Middle class.

LD: Upper middle class possibly?

RF: Yeah, I would say upper middle class. Yeah.

(8:20)

LD: Mmm-hmm. Was it... Were there a lot of families living in the neighborhood--

RF: Very definitely. It was very heavily populated. It was around a golf course. We were about maybe 100 yards from the golf course. So we used to sneak over there and play golf at night.

(Laughter)

RF: And caddied, of course.

(8:51)

LD: Mmm-hmm. What about your experiences caddying? I know that my son caddied when he was younger and he has some great stories to tell.

RF: We uh... I remember Walter Hagen came out there to, on an exhibition one year. I don't recall what year. And ... But, I used to caddy for a doctor who was left-hander. And, he would always ask for me whenever he came out I caddied for him. He asked me one day, he says, he was a lefthander, and he had, he says, "I'm in the process of buying some new clubs. Do you play left handed?" I figured, what the hell, if I could get some clubs.

LT: Yeah!



(Laughter)

RF: Sure. He gave me these golf clubs and I played left-handed for a couple of years.

LT: Free set of golf clubs.

(Laughter)

RF: Free set of golf clubs, yeah.

(9:48)

LT: Was it a public golf course? Or was it a --

RF: It was private.

LT: Do you remember the name of it?

RF: Hammond Country Club.

LT: The Hammond Country Club.

RF: Yeah.

(9:57)

LT: So that was before you moved to Calumet City, that's when you were living in Hammond you lived by the golf course?

RF: No. In Calumet City.

LT: Okay.

RF: The golf course was in Calumet City.

LT: Oh, okay.

RF: State line was here. And just a hundred yards away was Calumet City.

LT: Oh, okay. I understand.

RF: But they called it the Hammond Country Club.

(10:15)

LT: It was the Hammond Country Club.

RF: Yeah.

LT: So it was for members only.

RF: Yeah, A lot of Polish kids.

(10:24)

LT: A lot of Polish kids?

LD: That was my next question.

(10:27)

RF: It was predominantly Polish. And to this day I know every Polish bad word in the dictionary.

(Laughter)

RF: I can recite them verbatim.

TS: You're being recorded.

(Laughter)

RF: I won't use any of them.

(Laughter)

TS: I wouldn't know

LT: I don't speak Polish, so...

LD: (indecipherable)

(10:53)

LT: So is your family of Polish descent at all? Fitzgerald doesn't sound very Polish.

RF: Irish.

LT: Irish.

RF: My mother was born in Ireland and my father was born in Chicago.

LT: So what was it like being an Irish family in the midst of all these Polish kids?

RF: Oh, I mean we got along real good.

LT: Yeah?

RF: Yeah. They treated me royally. And I just got along with them real well. And... so it was, it was a happy summer every year. We never had a car. And we walked. Walked to school, walked to church, walked downtown. So as a result, we developed legs.

(Laughter)

RF: And I went... ended up going down to Saint Louis University. On a football scholarship. Back in 1932 it was still the Depression. My brother was going to Purdue. My father sent him to Purdue so he couldn't send both of us to college. But I got a football scholarship down at Saint Louis. So I got my board and room and Bull Durham down there until I got out of law school.

(12:14)

LT: What position did you play on the football team?

RF: The end.

LT: The end?

RF: Yeah.

RF: I was captain my last year.

LT: You were captain?

RF: Yeah, so I fooled a lot of people a lot of times.

(Laughter)

(12:26)

LT: You mentioned that you were able to walk to school and to walk to church. Do you remember the name of your school back when you were a kid?

RF: Well, I went to St. Victor's Catholic school.

LT: Okay.

RF: (coughs) And Thornton Fractional High School.

LT: Thornton. And did you go to St. Victor's for K through 8? For first grade through eighth grade?

RF: Originally, for the first six years, I went to All Saints in Hammond.

LT: Okay.

RF: And then we moved to Calumet City. And we went to St. Victor's.

(12:59)

LT: And was that the name of your parish, too? Was the church attached to the parish?

RF: St. Victor's, yeah. Seventh and eighth grade. Then I went to high school in Calumet City.

(13:10)

LD: Did all of the families go to that church or was there a division between the Polish families and the Irish families?

RF: Most of the Polish families went to St. Andrew's which was the Polish church. St. Victor's was the other church.

(13:28)

LT: Was it Irish and other ethnicities?

RF: Pretty mixed.

LT: Pretty mixed, pretty mixed.

RF: Yeah.

(13:36)

LT: Were the Polish kids that you grew up with, were a lot of them from Poland or had their parents been born in Poland?

RF: Parents, primarily--

LT: Parents.

RF: --born. Yeah. Came over. They all spoke Polish, but they, I mean, they spoke English 99% of the time. The only time they spoke Polish when they were cursing us.

(Laughter)

LT: And that's how you learned your Polish words.

RF: Yeah.

(14:10)

LD: Did you all go to school together? You went to separate churches--

RF: Separate church and school.

LD: Oh, separate school as well.

RF: Most of those kids went to St. Andrew's which was a predominantly Polish church. And... so we didn't...we only saw them in the summertime.

(14:32)

LT: You mentioned that your father was a bailiff in the courts. What were the professions of a lot the other men in the neighborhood? Do you remember any of them? What they did?

RF: Well, there was a doctor lived across the street. And another fellow was in the meat packing business. And the fellow next door to us was an engineer. And, the other fellow had a (indecipherable) company... it was a ... Gosh, they made medical supplies and he owned that. And, so it was actually a rather semi-affluent neighborhood.

LT: Mmm-hmm. Mmm-hmm. Lot of mix of professions.

RF: Yeah.

(15:31)

LD: Do we want to go on to high school?

LT: Yeah, sure.

(15:35)

LD: You apparently played football in high school—

RF: Yeah.

LD: --since you went to college (indecipherable) on a football scholarship. What other kind of memorable events do you have from your high school days?

RF: I played football, basketball, track.

LT: Wow.

(15:56)

RF: And, I was in the school play. *Applesauce* was the name of the play.

(Laughter)

RF: I'll never forget it. In fact, I was looking at the old chronoscope the other day. I was on the golf team. So we kept pretty busy.

(16:17)

LT: Do you remember the role you played in *Applesauce*?

RF: I was the lead.

LT: The lead?

RF: Yeah. It was a guy who was doing a lot of BS-ing.

(Laughter)

RF: They called it *Applesauce*. And that was the name of the play. It was quite an undertaking.

(16:39)

LT: You, obviously since you went to Saint Louis on a football scholarship, was that your favorite sport or was that the one you excelled at the most?

RF: I, that's all I played down there was football. When I played, when I got out of there, finished my football at St. Louis, they had a, the old American league down there was the St. Louis Gunners. And I played with them two years.

LT: Oh you did?

RF: Yeah. Got \$75 a game. Trying to spend \$75 in a week was one hell of an undertaking.

(Laughter)

RF: Drank a lot of beer.

LT: Yeah!

(Laughter)

RF: But that was a great experience. And my last year I also coached ends. I couldn't play football after my four years so I coached ends the last year and they gave me the scholarship for the fifth year. Because the law school was three years of law, two years of pre-law.

(17:48)

LT: So was it a combined law program then that you did at Saint Louis University, it sounds like? You did two years of pre-law, and then three years of law?

RF: Three years of law.

LT: So, it's five years total of school there?

RF: Yeah.

LT: Okay, okay.

(17:59)

LT: Did you know from the beginning when you started at St. Louis that's what you wanted to do?

(18:03)

RF: Yeah. I had a civics teacher who was studying law at night and he and I were very close. He sort of enticed me to get into the law profession. I'd liked to have gone into medicine but hell, I wasn't smart enough to be a doctor, so I became a lawyer.

(Laughter)

(18:26)

LT: Was this civics teacher from your high school?

RF: Yeah.

(18:29)

LT: Do you remember his name?

RF: Ahhhh....

LT: Just out of curiosity.

RF: God. What... I was thinking it was Lamka. But it isn't Lamka. It'll come.

LT: Okay.

RF: He was a great guy. And....Can't think of it now. It'll come.

LT: Yeah?

RF: Maybe.

(18:55)

LT: So his class was really influential to you when you were in high school?

RF: Yeah, yeah.

(19:00)

LT: Was it because he was a good teacher or you had a good relationship with him or--

RF: I think a combination.

LT: Mmm-hmm.

RF: Yeah. He was ... I don't know whatever happened to him. But he did become a lawyer, I know. And... But after I got out of school, I... you know you forget these people.

LT: Right, right.

(19:25)

LD: While you were in college, you said it was during the Depression, did you feel any of the effects of the Depression yourself?

RF: (coughs)

LD: Because of your scholarship and your being in college, were you sort of insulated from--

RF: Yeah. We got our board, room and tuition. And, back in those days, I mean, if you had five dollars in your pocket you were ... we used to also get a job as professional pallbearers.

LT: Oh really? (laughs)

RF: There was an alumnus down there that had a funeral parlor. And sometimes the wealthy people didn't want to impose upon their people. So they'd call the university. So they'd get six football players and we'd get five dollars for being professional pallbearers.

(Laughter)

LT: Never heard of that before.

RF: So five dollars went a hell of a long way back in the 30s.

LD: Absolutely. (laughs)

RF: Yeah, so we... no, we never wanted for anything. Down there we got a 25 ounce of beer for 15 cents. So, as I say, it was a place in heaven. So, we had great times.

(20:42)

LT: Did any of your friends from the neighborhood or from the high school go to Saint Louis also or were you the only one from your neighborhood?

RF: One fellow from Hammond. Roomed with me for awhile. Fellow by the name of Montevino. He went to St. Louis. He was a center. Good, good ball player. Very close



to me. Of course the other fellows lived in the house with us. It was an old broken down mansion and all the football players stayed there. The... back in the 30s the NCAA sort of put a limitation on the number of scholarships Saint Louis could have. So you had to have a member of the alumni put you under his care and take care of your board and room. And my guy was Bob Hannegan who ended up being the secretary of the postal, I think he was the postmaster under Roosevelt. And back in 1932 when Roosevelt ran for the presidency why, Bob was my sponsor, he had me go out and do a little ghost voting.

(Laughter)

(22:15)

RF: Eighteen years old. I remember the one time I went down into this basement to vote. The fellow says, "What's your name?" I said, "Casey." He said, "Goddamn it, Casey," he says, "you look great for 85."

(Laughter)

(22:32)

RF: "Get in there and vote."

(Laughter)

RF: So I voted for Roosevelt under the name of Casey. I left that place, we went to another precinct. The guy looked at me and he says, "Jesus," he says, "if I could be as young-looking as you, Frank, after being 88 years old."

(Laughter)

RF: So he says, "Get in there and vote, hurry up, and get the hell out of here." So when I was a freshman in college I was voting for Roosevelt.

LT: Several times?

(23:07)

RF: Yeah. I'll never forget Bob Hannegan. He was quite a (indecipherable).

(23:13)

LT: So he was an alumnus who took care of your room and board?

RF: For one year.

LT: For one year.

RF: Yeah.

(23:17)

LT: Were you acquainted with him before you went to college?

RF: No.

LT: No? He just...

RF: He was assigned to us.

LT: Okay.

RF: Each one of the football players had an alumnus took care of you. I think after six or nine months they lifted the ban and the school took care of us and our own place to live. In those days it was \$30 a month for your board and room. \$125 tuition. God, what it is now!

LT: Yeah! (laughs)

(23:53)

TS: Did you have a winning season?

RF: Yeah, yeah we did. We won the Missouri Valley conference that year, my senior year. And we, we had some good football players. Some fellows went to the ... Our guy who was the center, Red Krause, went to the Washington Redskins. And, Carl Kane went to Philadelphia Eagles. And, so we had some good kids.

(24:28)

LT: Did you keep in touch with any of your friends from St. Louis or from the football team for a long time?

RF: Carl Kane. I was his best man. When he, went out to (indecipherable), New Jersey... Ruth and I used to go out there, see him. He was a troublemaker.

(Laughter)

RF: Stories not fit to be printed, I'll tell you.

(Laughter)

RF: Those I'll live and die with.

(Laughter)

(25:01)

LT: And you mentioned that you lived in a run-down house. Was that just for one year or was that all five years you were there?

RF: It was a big old mansion. It had all the earmarks of an 1890 mansion. Had almost seven or eight bedrooms. And we... and there was an old professor who lived downstairs. He was sort of the overseer. Guys gave him a bad time.

(Laughter)

RF: We were up on the second floor, and he was down on the first floor. And they used to take a little tin ball and run it down the stairs. And it'd go, clump, clump, clump.

(Laughter)

RF: He'd come out and he'd say, "Cut that stuff out!" Anything to agitate the professor.

(Laughter)

RF: But he was, he was a good 'ol guy.

(25:58)

LT: And how many other guys were in the house with you?

RF: I think there were about... 12. Twelve of us in one house. Then of course after that we ended up in room, boarding houses.

LT: Okay. When the university started taking care of you?

RF: Yeah, yeah, that was high class living then. We were at the boarding house. Now the campus at St. Louis is... God Almighty, I just got a brochure.

(Laughter)

RF: God, it goes all over the place. When I was down there, it was just... One block would take care of everything. But... it's ... the old Jebbies took good care of us. And...but, we had a lot, a lot of fun.

(26:54)

LD: Did they have a big legal program at St. Louis when you were down there? Were there a lot of students in that program with you?

RF: Oh I think we had, probably in each class not more than 30. Thirty students. One girl. She was from Belleville.

TS: What year was this?

RF: Back in '34, '35. She...Smart as hell.

(27:55)

LD: Did you tend to include her in your group or because of the time that it was, was she kind of pushed to the side?

RF: She was very acceptable to the school, but socially, why, she didn't have too much to do with the students. Very nice. Lovely person. She ended up practicing in Belleville. So, we had the usual courses, you know. The... oh, everything they teach now I guess. Course I'm an honors student from John Marshall, you know. I got an honorary degree from John Marshall. And I gave their commencement address one year. So you see how it's going up since I got the hell out of there.

(Laughter)

RF: They were very nice. And, I don't know what the hell I said at the commencement.

(Laughter)

RF: They didn't boo. So, I got by, anyway.

TS: It was a success.

RF: Yeah.

LD: What year was that?

RF: Oh God, I don't know. Just look at the plaque downstairs.

LT: Okay. We'll look at that.

RF: Look at it.

(28:57)

LT: When you were, you went on this accelerated program at Saint Louis University, was that normal then? Instead of doing four years of college and then doing three years of law school? Because your program sounds unusual, at least today.

RF: Yeah, it's two years of pre and three law.

LT: Okay. That was normal back then.

RF: Yeah. Mmm-hmm.

LT: Okay, okay.

RF: Yeah.

(29:18)

LT: And then when you graduated did you take the bar right away?

RF: No, I came up here. My father was real sick. And, so I left St. Louis after I got out of school, and came back to Chicago. And, I waited a year and after my father passed away I took the bar in Illinois. And... snuck through.

(Laughter)

(29:55)

RF: But... then, I went into the Navy shortly after that. And, spent a couple of years in the South Pacific. Communication officer. And...

(30:10)

TS: On a ship?

RF: No, I was land-based. What we would do is...take... I spent most of my time in the Philippines and the, Hollandia which was New Guinea. And we would go in and after they would take the island, we would go in and set up a communications center. And then we would stay there for maybe six months and go on to another island. So we... spent a lot of time in the Philippines. (indecipherable) All those places. So, then when I came back, I ran into the mayor of Calumet City as I was going to, to sign out of the Navy and pick up my last check. And he asked me what I was doing. I said, "Well, I just finished my stint in the Navy. I'm going to probably start practicing law." He said, "Well how would you like to be the city attorney of Calumet City?" I says, "Well, gee, yes."

(Laughter)

(31:28)

RF: Pays \$125 a month. And he said, "We'll get you an office across the street." So that set me on. Then I started to represent school districts. I represented the high school district, two or three grade school districts. I was a city attorney out in Lemont. And, so I represented about five or six school districts. And, every time we had a bond issue, why of course, you got two percent of the bond issue. So those were very very very very luxurious--

TS: Days.

(Laughter)

RF: --days. And...

(32:15)

TS: You were married by then.

RF: Yeah, yeah. We ...I was pretty lucky in the law business. I became the Democratic committeeman out in Thornton township. I was a very close friend of Mayor Daley's. And...

(32:34)

TS: That's THE Mayor Daley.

LT: Right, right, right. We figured.

(Laughter)

RF: Yeah.

LT: The older one.

(32:41)

RF: He helped me get on the bench.

(32:46)

LT: Just going back to your World War II days, do you remember what year it was that you enlisted in the Navy? Or approximately?

RF: Ummm.... Let's see...Forty... '43 I think.

LT: '43? And then did you stay there until the end of the war?

RF: Yeah.

(33:09)

LT: And you mentioned that you ran into the mayor of Calumet City, were you acquainted with him before?

RF: Yeah, I knew him before. And, when I was in the Philippines, walking down the street, and I saw this guy. He looked familiar as hell. And I said, "Captain." I said, "where the hell do I know you from?" He says, "My name is Jimmy Roosevelt."

TS: Oh!

RF: I says, "Holy cripe!" I says, "I'm sorry." I says, "I knew I knew you from someplace."

(Laughter)

(33:44)

RF: He says, "Yeah, I'm Jimmy Roosevelt." He says, "I'm glad to make your acquaintance. He said, "I don't have time to stop and have a beer with you." "But," he

said, "If you're going to be around in the city for any time he says I'm over at the army barracks." He says, "Come on over and we'll have a beer." But never got to see him.

LT: Oh. (laughs)

RF: But, running into Jimmy was one hell of a coincidence. But he was a very gracious guy. DuPont was over there with us. I ran into him a couple times. So we....

TS: Very egalitarian service.

(Laughter)

RF: Yeah, all high class guys. Yeah. But... some great experiences.

(34:44)

LD: When you came home, and you went to work as a lawyer in Calumet City, what sorts of cases were you involved in for them as the city attorney? Was it criminal law or...?

RF: Well, it was, you handled everything, divorce. Right across the street was the city court of Calumet City. In those days they, they had city courts all over the county. Midlothian, in fact Suria--

TS: Oh

RF: --was a city court judge over in Midlothian. And so you'd just go across the street. Most of the divorces were defaults. So you'd prepare the complaint, answer, stipulation. Go across the street and get a divorce--

(Laughter)

RF: --sign the decree the same day. So boy I tell you, two hundred dollars was the general charge. I always got the impression that you know you could sit down with these people and reconcile 'em up. I'd sit down with them for hours and find out they went across the street to this Jewish friend of mine. He gave the divorce. The hell with this reconciliation.

(Laughter; RF knocks on table)

RF: You're going to get a divorce.

(Laughter)

RF: I finally found out, here I was doing all this work, this guy was making all the money. So he told me, "You know. You're nuts. Try to get them to reconcile. They come over to me and we give them a divorce. You lose two hundred bucks."

(Laughter)

RF: So Dave was...He and I ... God, everybody hated his guts. Dave and I got along real well. But...he... you handled a few criminal cases but not many.

(36:40)

TS: So you had, you had a private practice as well as being city attorney?

RF: Oh yeah, yeah. In fact, when I first got on the bench I was assigned the divorce division.

(Laughter)

RF: First six months I was in the divorce division. And on a Friday John Boyle called me. And he said, "Hey Fitz." He says, "On Monday you're going out to criminal court." I says, "Jesus, John. I says, "I don't know anything about criminal law." He, "Well, read Chapter 38 over the weekend, when you go out there, you'll be the smartest son of a b out there on 26<sup>th</sup> Street."

(Laughter)

RF: That was my baptism to.... Thank God I had two great criminal lawyers. Or, State's Attorneys. Bob Boyle was one of them.

TS: Uh-huh. Yeah. Couldn't do better than that.

RF: And the other guy, I can't think of his name. But he was smart as hell. So they, got me through the first six months and after that, why, you know you sort of fell in with it, as you well know.

(37:54)

TS: Yeah, yeah. I had the same experience. It was a Thursday that Judge Boyle called.

(Laughter)

RF: (Indecipherable)

TS: He said, "Swain." I said, "Yes, yes Judge Boyle." That was the Chief Judge.

LT: Okay.

TS: He said, "For some reason Dick Fitzgerald is high on you." I said, "Oh, I'm pleased to hear that." "Monday you start in criminal (Indecipherable)"

(Laughter)



RF: Oh boy, he was really a great guy.

TS: Not everybody liked him. But he--

RF: Yeah.

TS: --but he ran a tight ship.

RF: Oh, he was tougher than heck. Yeah. Really tough.

(38:32)

LT: You mentioned that you were city attorney for Calumet City and then you were in Lemont for awhile?

RF: City attorney for Lemont.

LT: (almost simultaneously) City attorney for Lemont.

TS: You didn't live there, you just represented them.

RF: No. The mayor was a good friend of mine. And there was another little village out here. I can't think of the name of the place. It's... I was the city attorney for the city and the school district. And, so that kept me pretty busy.

(39:05)

LT: And you had this in conjunction with your private practice as well?

RF: Yeah, yeah.

(39:12)

LD: What sorts of cases would you handle for the different school districts? Just advice on contracts?

RF: Advice, primarily.

LD: Mmm-hmm.

RF: And if they had a bond issue coming up I handled the bond issue. If they had any problems with the teachers, why of course we took some mediation with them. And, the, oh, the general problems that they have in school districts. But the big thing was the bond issues and advising the board on matters that came up on a ... You attended all the board meetings. Things that came up why of course you'd try to resolve. And...

(40:05)

TS: Were you salaried or did you bill them?

RF: No, they, I was salaried generally in the school districts. And then of course if you had the bond issues or anything extra-curricular...

TS: Mmm-hmm.

(40:18)

RF: I used to do a lot of foreclosure work on real estate. Many of these big subdivisions put the subdivisions in and then the Depression came along and they didn't develop them. So the, the land remained vacant with all the improvements in. And they put the improvements in by special assessment. And, when things got tough, why they didn't pay the special assessments or the taxes. So, and they didn't pay the real estate taxes. So we could go in as city attorney and foreclose on the property. And then on payment of the special assessments. And then you would combine the real estate taxes along with your complaint. So by the time you got through with the... And the property would be sold at auction. And of course we would buy the property. And of course as a result, it was one hell of a lucrative business. You had five hundred lots, you know. Somebody would pay you to do the work. You either took time to yourself or you charged your client \$150 or \$250 a lot. So we did a lot of foreclosure work, too. And that was very lucrative. Took care of a lot of (indecipherable) and Bull Durham.

(Laughter)

(42:01)

LT: You, obviously you were in private practice and a city attorney for a long time... So what made you change to, you know, become a judge then? Especially since it sounds very lucrative.

RF: Yeah, well, I suddenly decided I wanted a change. I mean, this became, you know, a sort of a monotonous thing every day. And, so I suddenly decided I'd like to get on the bench. I talked to the mayor, and lo and behold I ended up under the mayor. Of course I had to ask him three times before I got on.

TS: That's a low number, you know.

(Laughter)

RF: Yes, that's right. But he was...

(42:46)

TS: How did you get to be committeeman in Thornton?

RF: You had to run for it. Democratic slate. Fellow who was the committeeman died and I was very close to him so I ran for the committeemanship. And Thornton Township was the largest township in the, in the, in the county. And so it was a...

TS: Did you have opposition in the election?

RF: Not the first time. Second time I did. But, you had no problem.

(Laughter)

RF: They had a good organization. So...

(43:30)

TS: You'd been taught how to vote earlier.

(Laughter)

RF: Oh yeah, and often.

LT: Back in St. Louis.

RF: Yeah. Picking up these sixteen-year-old kids and hauling 'em in.

(Laughter)

(43:43)

LT: What were your responsibilities as Democratic committeeman?

RF: Well, the primary responsibility was to handle the elections and to organize precincts in the various townships. As they did wards in Chicago they had different precincts. And out here we probably had maybe 100 precincts in the township. So it was one of the largest townships. And it was not predominantly Repub- or Democratic. It was maybe five or six of the towns, Calumet City, Harvey, a few of the others were all Democratic but the rest Republican. So we used to have quite a battle on our hands all the time.

LT: Mmm-hmm.

RF: But we were never expected to carry for the Democrats. We just had a damn good showing.

TS: Damage control.

RF: Damage control, that was it.

(Laughter)

RF: Right.

(44:56)

LD: It was in your capacity as committeeman that you met Richard J., Richard Daley?

RF: Yeah. And, he and I became very close.

TS: As committeeman you had to go to all the central committee meetings.

RF: All the cent-, yeah all the central committee...

TS: And that's where he would preside.

(45:19)

RF: Yeah. Then when Rich was state's attorney, Rich and I were very close. We had lunch at least once a month. After he became Mayor I went in to see him a couple of times. "What can I do for you?" I said, "Well, what can you do for me? You never did anything for me."

(Laughter)

TS: Ah, the father to the son.

RF: I was at Winston & Strawn then. And, I had some great experience over there.

(45:56)

TS: When did you leave the bench?

RF: Oh, let's see, I was 78 at the time.

(46:05)

TS: You couldn't have run for retention because of the legal limitation?

RF: Yeah, I could have.

TS: Oh.

RF: But, uh...

TS: You didn't run, though.

RF: I decided hell, 27 years on the bench.

(Laughter)

TS: You opted out, you maxed out on your pension.

RF: Yeah. That's right. I thought about that pension, too.

(Laughter)

RF: Boy, that was the big deal.

TS: Oh yeah.

(46:33)

RF: I was with John Hourihane who was on the appellate court. He was on the criminal court with me. And of course he, after he got out you know, he was still on the bench. He would sit down, constantly figure out his pension. If I get on the appellate court, I'm getting this much. Oh why the hell don't I get on the appellate court? I says, "So why don't you?" So he did.

(Laughter)

RF: And he did get on the appellate court for a couple of years.

TS: And he gave you a finder's fee--

(Laughter)

TS: --for giving him the idea.

RF: Doesn't even buy a lunch that cheapskate.

(Laughter)

RF: No, he's... That pension is a good thing. Of course, they take out your income tax, your Social Security and all that. By the time you get through with it why...

TS: At this point the health care is very significant.

(47:31)

RF: Oh, my God Almighty. My wife was, (coughs) she was bedridden for eight years. And...

TS: It took care of it all.

RF: Well, I had three nurses a night. Of course I took care of the nurses myself.

TS: Mmm-hmm.

RF: But every time she'd go to the hospital, why, Medicare and the pension—

TS: The pension

RF: --took care of it. God I tell you... Without that, I mean—

TS: You wouldn't be here.

RF: --I'd be scrounging out at the mills. Yeah.

(48:05)

LT: How did you meet your wife? You said...

RF: She was down in St. Louis.

LT: She was down in St. Louis... Was that where you met her, at school?

RF: Yeah. Uh-huh.

(48:12)

LT: Was she also a student there?

RF: Yeah, she was out there for awhile.

RF: And, I don't know how she put up with me but she did.

(Laughter)

(48:19)

TS: How many years?

RF: We were married 62 years.

(48:24)

TS: She put up with you all that time?

(Laughter)

RF: She sure did. And I was no, I was no prince, I'll tell you.

(Laughter)

TS: That's not what I hear. But I never talked to your wife.

RF: She was a good 'ol Dutchman. And...

(48:46)

TS: What was her family name?

RF: Hollembeak.

TS: Oh, you got that.

LT: Yeah. Mmm-hmm.

(48:51)

RF: Yeah, her father was a graduate of Iowa State. He owned a farm up in Casey, Iowa. Half a section.

TS: Boy! Huge!

RF: Huge farm. She had two brothers and a sister. They all were born up, raised on that farm. They came to St. Louis. Father was a smart guy, but... I don't know what the hell he did. He worked for the electric company out in St. Louis. So it was... a great group.

(49:40)

LT: Did you get married before you enlisted in the Navy? Or did you get married after?

RF: Yeah. Before.

LT: Before.

RF: Yeah. Fact, I had a, we had my one, my oldest son was born then. So, hell, they took me in. I, the guy on the draft board was a good friend of mine. He says, "You're going." And I says, "Geez, John." I says, "I got a wife and a kid." "Tough stuff." He says, "There are a lot of other guys got two kids." He says, "You're going." So I said, "Boy, what I better do is to get the hell out of here and get a commission." So I worked on the Navy and finally got a commission. And, before that, I ran into a friend of mine in Chicago who was a Marine captain. John Chevigny. Went to Notre Dame. Played football. Hell of a great guy. And he said, I told him I says, "I'm going up, signing up to the Navy, getting a commission." He says, "It's gonna take you a month." He says, "C'mon. I'm in the Marine Corps. We'll go on up and we'll get you signed up right today. You'll go down to Quantico, Virginia with your commission." He says, "I'll have you lined up. C'mon with me." I said, "Wait a minute, I gotta talk this over." He says, "Well come on up and talk to the sergeant." So the sergeant had all the papers out there, lined up. He says, "Just sign here." He says, "Tuesday we're going to send (indecipherable) down to Quantico. You'll go with 'em." I said, "Christ, I just came in here to get some information."

(Laughter)

RF: "You guys got me down to Quantico." But the ironical thing of the whole thing, John Chevigny's group were over in Vietnam or some place and got wiped out.

TS: Yeah.

RF: The whole group.

TS: Yeah. No, that was bad business.

(51:39)

RF: But for the grace of God, I mean, I'd been in with a bunch of crazy Marines. So, I dodged that one and finally got this commission. I don't know how I got it, but I, they gave it to me. And, so I went to Harvard, Princeton first, and got your indoctrination at Princeton and then I went down to gunnery school in Mississippi. I was all set to get an armed guard. They had you know, the merchant ships had a, a gun on the fantail. And you had your crew. So I was all set. I had my crew. We had trained down at Mississippi. I got word when I was in New Orleans waiting for my ship to go up to Harvard. I say, "Go up to Harvard. What the hell is up there?" Communication school. Went up to Harvard for three months. So I'm a--

TS: You're a Harvard man.

RF: --I'm an Ivy Leaguer. Princeton, Harvard.

(Laughter)

LT: Right.

TS: Good for you.

RF: Right. Made all the schools, yeah.

LD: Do we want to take a short break at this point?

END OF AUDIO FILE ONE



BEGINNING OF FITGERALD INTERVIEW, PART TWO

RF: ...an escape artist, who, um, geez I tell you, he escaped from Statesville, escaped from county jail twice.

(Laughter)

RF: And I was trying him for an armed robbery. He was a colored fellow, handsome, big athlete, and every time he would come to court there was always two or three very pretty girls there to give him—

(Laughter)

TS: Moral support.

RF: -- solace and comfort. And so this one day, one of the girls came in the courthouse early, and...I had an old clerk who was about 75 years old, and she wanted to know if she could use the telephone back in the library, and he said, "Well, you're not supposed to," he says, "but it's 8 o'clock in the morning, nobody's around, go ahead and use it." So she had this book, and inside of the book was a 38. [Gasps] So she knew that every time he came into the courtroom they put him in the library because of, he was, as I say an escape artist, so she takes this book and puts it in the drawer on this, under the big table, so when he comes in every day, he goes into this, the room, picks up the book, you know, goes out before me after awhile and he asks for a continuance because his lawyer wasn't there. So I granted him a continuance. So he has this book and takes the gun out as they're leading him out into the back of the courthouse and the guy says to the bailiff, "We're gonna to take a walk." And he says, "What the hell you talkin' about," he says, "that's not a real gun." He says, "The hell it isn't." So he pulls the trigger and geez the damn blast, I mean, in that confined area you could hear it all over the place. So he goes downstairs, goes thru Epton's courtroom--

TS: Mmm-hmm.

RF: -- and of course every, the cops were all out, they heard this shot so they were all waiting. So he gets out into the hallway and geez these Chicago cops they just riddled him with bullets—

LT: Oh my gosh!

RF: And he, finally just...that was it.

TS: Mmm-hmm.

RF: And so I've got the book down here and the gun that was in it is a piece of the memorabilia (indecipherable) 26, I'll let you look at it before you leave.

(Laughter)

TS: Its not loaded I hope. I don't want these girls to get any ideas.

LT: Right!

RF: No, in fact Matt Rush was in there, he and Tom Tully were prosecuting this guy.

TS: Yeah, huh.

RF: And so Matt gave me the gun after he had it, I guess they disarmed it, whatever they had to...

TS: Did he kill the deputy?

RF: No.

TS: Yeah?

RF: No.

TS: That was lucky.

RF: The deputy was a big tough son of a gun, but when he went into the courtroom, he let the deputy go and he picked up, grabbed a public defender—

TS: Oh my!

RF: -- marched him out into the hall and that's when the cops really lambasted him and...

(Laughter)

TS: Did they miss the public defender?

(Laughter)

RF: Yeah they missed him.

LT: Oh well good.

RF: They ended up prosecuting this gal, and—

(Laughter, indecipherable talking)

RF: -- she got a couple of years or something.

TS: An accessory to say the least.

RF: But she was a pretty girl, and I would have given her probation but I didn't try her!

(Laughter)

TS: You're soft hearted.

RF: Yeah!

TS: That's what it says here.

RF: Right! Easy does it.

LD: Especially in that *Time* article.

RF: Yeah!

(4:28)

LT: You mentioned that when you decided to leave private practice and become a judge it was because you found your private practice so monotonous. What did your family think of your decision to leave private practice and become a judge?

RF: My wife didn't care.

LT: She didn't care?

RF: Naw, naw.

TS: How many children did you have at that time?

RF: Two.

TS: Two?

RF: Two boys, yeah.

(4:54)

LT: And why did you decide to become a state judge versus a federal judge?

RF: Well, there's a different route you have to take to get a federal judgeship, and I was happy to be in the state courts, and I was happy doing what I was doing. I, one of the famous criminal lawyers, I can't think of his name off hand, he had a couple of good friends on the supreme court and, came in to see me one day, asked me if I'd like to get up on the appellate court, and I said, "What the hell would I do on the appellate court!"

And he, I said, "What makes you think I could get on the appellate court?" And he said, "Well so-and-so and so-and so-are my very dear friends"—

TS: Mmm-hmm.

RF: -- "and they told me that there's an opening that"—

TS: If you want --

RF: -- "if you want it you can have it." And I says, "What the hell would I be doing on the appellate court, writing opinions?" (laughter and indecipherable) Lucky I can sign my name, let alone writing opinions!

(Laughter)

TS: I think the real issue is that no one could replace you where you were.

RF: Oh hell I never, there were a lot of guys out there that were better equipped than I was. I mean...

TS: That's not what I hear.

(Laughter)

RF: You're talking to my press agent.

(Laughter)

TS: Oh him, yeah, my dear friend.

RF: Yeah, no I was pretty lucky, met some great guys.

TS: How long was Tully in your courtroom?

RF: About two or three years and he and Matt Rush were partners and...

TS: Was Joe Roddy with them?

(7:00)

RF: No, not then. Ron Himmel was the public defender. God, they used to give that guy a bad time when they were picking a jury. They would both be seated, the jury would be here and they would be seated this way and Ron Himmel would be over here and he would have to talk over these two guys to the jury. And finally he got smart and he said, "These son of a b's are blocking me." And so he came back to me and he says, "Look what these two guys are doing." He says, "I cant see the jury, I'm tryin' to pick the jury, and one of them's sitting here, one's sitting here," and he says, "They're up high,

I can't see the jury." So I call these guys in and I says, "Come on, what are you doing?" "Well, we aren't blocking him." I said, "The hell you're not blocking him. One, I don't want you, one guy sit here, one guy over here. Let him see the jury." Tully says, "That son of a b," he said, "Doing a thing like that."

(Laughter)

(8:06)

RF: But one story I (clears throat) I love to tell is the (clears throat) the story about this kid came before me, he's about 17, stealing cars, and, real smart little kid, and I told him, I said, "Sylvester," I said, "I'm gonna give you probation because I think you have some potential. I think you can go back into the community, go to school and make something of yourself." He said, "Yeah, I'm goin' to school, I'm never coming back here again." I said, "If you do, you're going to get two to six, do you understand that?" "Yes sir." Six months later here he is and I said to him, I says, "Sylvester, what'd I tell you I was gonna give you when you came back?" He says, "I don't know." I said, "Two to six and you got it. Take him away." So as he's leaving the bench, in front of my bailiff he says, "That old gray haired son of a bitch," and my bailiff grabbed him and he says, pulled him up before me, says, "Judge, this guy just said you were an old gray haired son of a bitch." I said, "Did you tell my bailiff I was an old gray haired son of a bitch?" He said, "Judge, I don't know how he found out. I didn't tell him."

(Laughter)

RF: I said that little son of a ...talk about a response. I said okay, boy. Yeah. Oh, boy.

(Laughter)

(9:48)

LD: Just to clarify, you were first elected to the bench in 19...

RF: 64.

LD: Okay, alright. I just wanted to make a note of that. So once you were appointed to, um to... How exactly did it work, were you appointed or did you have to run for election?

RF: No, I had to run for office.

LD: Okay.

RF: Yeah.

TS: You got slated first.

RF: I got slated first and then—

LD: Mmm-hmm.

RF:-- I ran.

TS: That's where being a township committeeman helps.

RF: That helps, yeah.

(10:20)

LD: Did you have any difficulty with campaign finances? I know that it was mentioned that the ABA today has some concerns about the—

TS: High cost.

LD: -- the money being spent.

RF: I primarily ran in my Thornton township, so I mean I controlled the township and we didn't have any finances to amount to anything because I had all my organization there so I didn't have to have anybody contributing to me. So no problem with money and so you were beholden to nobody but your own organization. And then of course, the Democratic organization took care of the other townships and the wards in the city, but I had nothing to do with them.

(11:07)

TS: You ran county wide?

RF: Yeah.

TS: Yeah?

RF: Mmm-hmm.

TS: Some judges are elected city only, some suburbs only, and some county wide.

LD: Okay.

TS: Yeah.

LT: And you have to run for a particular seat don't you for a ...

TS: A named seat

LT: A named seat, I think that's what Judge Swain told us, that you run for a named seat when you run for election.

RF: Generally you did, yeah.

LT: Okay.

RF: But I mean, but when you run for retention of course, you just...

LT: Right.

RF: Yeah.

LT: Was it someone who had retired or died when you were running for that particular seat, do you remember?

RF: I don't remember, but you had opposition, somebody ran again you and so we had no problems.

(11:55)

LT: And then you mentioned the first division, you were assigned to divorce division?

RF: Divorce, yeah.

LT: Okay, okay, and for how long was that?

RF: Six months.

LT: Oh, only six months.

RF: Yeah.

LT: Okay, what was that like?

RF: Well, I mean, here again, you know, you handle a lot of divorces and there was, the lawyers gave me more trouble than the clients. I mean they always tried to impress their clients and you knew what they were doing and of course you put up with them. And Bob Hunter was the head, he was the head of the divorce division, and a real great guy, and he brought in a psychiatrist, and the psychiatrist was advising us as to our demeanor on the bench, the way we handle the people, lawyers and the client [breaks off midway though the word client] and the participants. And of course as he said, you know, he said, don't try to mediate these people that come into your courtroom. The tendency is bring 'em into chambers we'll get 'em together. He says you're not equipped, he says you're not a psychiatrist, you don't know what the hell you're talking about, he says you're gonna do more harm than good so keep away from that. So I was just thinking of myself when I was practicing law—

(Laughter)

TS: Yeah.

RF: -- smart ass who was trying to reconcile everybody!

LT: To reconcile everybody!

RF: This guy finally, it took umpteen minutes to get on the bench to have some guy tell me what a stup [stupid] I was!

(Laughter)

RF: So, we finally realized, try your cases, no reconciliation here and so that...

(13:50)

TS: Bob Hunter lived around the corner from me on Kenwood in Hyde Park.

RF: Oh did he?

TS: And in our precinct he had a big family so there were always six Republication votes in our precinct!

(Laughter)

RF: He had a big farm too.

TS: Yeah that's right, he raised ox, or cattle out there.

RF: Cattle out there yeah, yeah, he was a great guy. He was a football player wasn't he?

TS: He looked like it. I don't know.

RF: I forget where he went to school, but he played football someplace. But...

TS: One time in a big snow dr--, a big snow, the people were going down Kenwood Avenue there where, right at 49<sup>th</sup> Street where I live, ah, were, some of them would get stuck. And so the neighbors were sort of out (laughs) helping their other neighbors get in. So these other couple of college guys came by and so Hunter and I were pushing his car and he sailed off I said, "I don't suppose he knew he had two circuit court judges pushing his car."

(Laughter)

RF: High class pushers!

TS: Yeah, well, that means something else!



(15:08)

LT: You mentioned the psychiatrist. Do you remember any particular instances or cases from when you were on divorce court that were unusual or anything that sticks out from, I know it was only 6 months, but...

RF: No, no, not really

LT: Not really?

RF: No, I mean I was not real happy there but, you know, you, it was easy, an easy assignment, and it is a good way to orientate a judge. Get him in there, and then get you out there in the boondocks and boy, I tell you it was something.

TS: Was there more hostility in divorce court or criminal court?

RF: The what?

TS: Was there more hostility among people in divorce court or criminal court?

RF: Sure, I mean the people in the divorce courts, I mean, they were vicious—

TS: Out of control—

RF: -- and the lawyers—

TS: -- worse!

RF: -- God, they were worse than the clients and you'd have to put 'em down, you know, call 'em back into chambers and say, "I know what you're doin' cut out the showmanship. Get on with the case." And most of them would settle down. And of course out at 26<sup>th</sup> Street, I mean, boy everything was (indecipherable) time and you didn't fool around out there. And they respected everybody out there.

TS: Mmm-hmm, that was the big leagues.

RF: Yeah, that was, you're in the big time now, yeah.

(16:44)

LT: Did you feel your six months on divorce court prepared you, that you really learned a lot?

RF: I think it did, I mean, it sort of at least got you the feeling of knowing where the hell you're going. And, but as I say, when you get out to 26<sup>th</sup> Street it's, a different ball game.

TS: Was Boyle the chief judge when you were appointed—

RF: Yeah.

TS: -- when you got assigned?

RF: Yeah.

TS: Yeah?

RF: Yeah.

(17:15)

LD: I am not from the Chicago area. What is 26<sup>th</sup> Street?

TS: That's the main criminal court division.

LD: Okay.

RF: 26<sup>th</sup> and California. They don't say the criminal court they say, "we're going out to 26<sup>th</sup>."

TS: Course that got confusing when you also had 13<sup>th</sup> and Michigan.

RF: And I had three judges at 13<sup>th</sup> and Michigan.

TS: Including me.

RF: (Laughs) Yeah, you were out there. That's right!

(Laughter)

RF: And Marovich out there with you?

TS: Yeah, and Romy Palmer.

RF: Romy. Who was the third one?

TS: Uh....

RF: Was Tom Fitz out there?

TS: Yeah, yeah, yeah, he was.

RF: Yeah, he's on the Supreme Court now.

TS: His clerk and my clerk got into a wrestling match in the corridor.

(Laughter)

RF: I swore Tom in.

TS: Oh you did?

RF: Yeah.

LT: Is that him up there? [Indicating picture on top of refrigerator]

RF: Yeah...great guy.

(18:23)

LT: And then you were assigned to criminal after and then that's where you stayed for the remainder, for the next 27 years?

RF: Yeah 27 years, a lifetime.

LT: Right, that is a lifetime.

TS: You got a life sentence, huh?

(Laughter)

RF: Yeah, I got the book.

(Laughter)

(18:41)

LT: And then I knew you were presiding judge over the criminal courts—

RF: Yeah, the, for 17 years.

LT: For 17 years?

RF: Yeah, for ten years I tried cases.

(18:56)

LT: Okay. How does one become the presiding judge over the criminal courts?

RF: The chief judge assigns you.

LT: Okay.

RF: John Boyle assigned me.

LT: Okay.

(19:04)

RF: Joe Power left and he ran for the Supreme Court. He wasn't elected but he was having trouble. And we had a few bad actors out there. We had an investigation called Greylord. A U.S. attorney's, in fact it was Dan Webb who was the state's attorney at the time, U.S. attorney, and they came out and talked to me about this investigation that was going on and asked me if I would help'em. And I said, "Well if I've got any bad apples, we sure as hell wanted to get rid of them." So they started their investigation and we worked with them. Couple of guys were indicted...and (coughs)...but...we worked with them, did a lot of work, helped 'em....Couple of guys got kicked out... but...I guess Sal Maloney's still in the pen.

TS: Yeah, that's right.

RF: Yeah, but...got a little plaque from the head of the FBI. Big deal.

(Laughter)

TS: It's worth how much on the CTA?

RF: I couldn't buy a beer with it.

LT: Were you relieved when you got the bad judges out when they were indicted or were...

RF: Well, I was surprised because (clears throat)—

TS: You never know.

RF: -- yeah, you never know. I mean the guys were doing their work and one guy was pretty heavy on the alcohol, Tom Maloney was a guy I never expected to be involved.

TS: He was, he was so affable.

RF: Yeah! He was just a good lookin', affable, nice guy and the other guy, he was on the bottle. And there was a murder case he was tryin', real hot case, and it was a bench trial, no jury, and he called me and he said, he said, "Boy, this is a tough one." He says, "You know I've got a lot of pressure on me on this case." And I said, "Well what you do is just sit down write out your opinion, cite your reasons, and that's it." And so he says, "Okay," "And I'm not going to tell you what to do," but I said, "you've been on the bench long enough." And of course little did I know that they'd reached him and offered him a bribe to find not guilty. And he was a notorious defendant. And he did. And then they had another case later on, and they got a hold of him in the saloon, he was about half stiff, gave him ten thousand bucks if he blew the case. Got off the bench, went out to Arizona and he died out there. They were gonna indict him.

(23:00)

RF: And then what I did, I put in a (clears throat) computer system to assign cases (clears throat) so's there'd be no impartiality [sic], nobody was seeing who got what. So we put in that computer system and it worked out pretty good. And...

TS: The computer would kick up three names and you'd have to pick one of them?

RF: No, it'd pick up one.

TS: Oh, it would only kick up one?

RF: Just one.

TS: So a real (indecipherable)

RF: So, I had, I had nothing, nothing to do with it—

TS: Totally random?

(23:36)

RF: Yeah. And of course we set up sentencing guidelines for the judges. Ahhhh...what we did is, was a group from New York University came in and they would go to each one of the judges and say on this type of case, what sort of a sentence would you give, I mean four to ten, or something. So they went to all of the judges, and each judge gave their opinion as to how they would sentence the person. So we took the most, or we took all of the information and set up our own guidelines. Ahhhh...the judges didn't have to follow them, they could do whatever they wanted to, but I mean, if you had a stinkin' case, and didn't know what everybody else was doin', you'd look at the guidelines between two and four, six and twelve, or whatever. So it sort of, I mean, it helped you, if you were not sure.

TS: The guidelines were much appreciated by people, particularly the newer judges like me who didn't know what the experience was—

RF: Yeah.

TS: -- whether judges...there was a lot of resentment at first about filling out the damned forms—

RF: Oh yes!

TS: -- but when the material came back it was so useful.

RF: Yeah.

TS: And it's so different than the federal guidelines which are mandatory—

RF: Yeah, and—

TS: -- don't give you any leeway.

RF: Couple a years later the legislature passed guidelines pretty much similar to what we had and so it worked out pretty well for the guys.

LT: Did those become mandatory, those guidelines passed by the legislature, or were they just—

RF: Yeah.

LT: Okay, so they became mandatory for all state judges?

RF: Yeah, but I mean it gave them leeway.

LT: Sure.

RF: Two to four, four to six—

LT: Oh okay, okay.

RF: -- but they were pretty much close to what we had already put up.

TS: You know, Vince Bentivenga got reversed for giving too light a sentence according to the guidelines I remember—

RF: (Laughs) Oh did he!

TS: -- yeah, which seems strange—

RF: (Laughs)

TS: -- that the state would appeal the lightness of the sentence.

RF: Yeah, the state. Yeah.

LT: (Laughs and indecipherable)

TS: I mean, he had, you know its one of those situations where you had a lot of considerations that were sort of outside the guidelines.

RF: Sure.

LD: This was all while you were the presiding judge?

RF: Yeah, mmm-hmm.

LD: Did you actually hear cases as presiding judge or was it you were just—

RF: No.

LD: -- in charge of seeing to the, the details in all the other of your courts?

RF: Right.

(26:13)

LD: Okay. And that's when you also, as presiding judge, when you also established the repeat offenders court?

RF: Yeah, mmm-hmm.

LD: So what year was that and could you tell us a little bit about it. I know we've got the article there, but...

TS: Uh, (clears throat) well, we were having trouble getting cases through the system. And these repeat offenders were the guys who were stalling all the time. So what we did is took three judges and assigned them to the repeat offenders, so when the assignment came up, for assigning a case, if it was a repeat offender, I mean the computer would spit it out 'repeat offender' and it would go to one of the three judges. And they were really knockin' out a lot of cases, and it, so there'd be about 300 or 600 repeat offenders on their call and heck they cut it down to about 320 or something when I left. When Tom Fitz came in after me, he had to do away with it, excuse me (cough). He said the case loads were gettin' too heavy and they had to use those three judges to help on the other stuff. So...

LT: So for how long was it in place then, do you remember, approximately?

RF: Oh, about three years or so.

LT: So three years?

LD: Was there any controversy surrounding the idea of maybe prejudicing a fair trial by labeling these people repeat offenders?

RF: Well, nobody knew it. I mean, when you went to trial, I mean the defender—

TS: The jury had no idea.

RF: -- yeah, they had no idea. No, the jury didn't know they were repeat offenders, so it was just our own group that handled the cases. Jury didn't know, nobody else knew, and that was the advantage of having the three, the repeat offender judges, because nobody knew what they were assigned to.

TS: You could get a mistrial if you'd refer to it.

RF: Oh yeah. Oh absolutely. Refer to them as repeat offenders, (whistles)—

TS: Try the case over.

RF: -- try the case over.

LT: Okay, okay.

TS: Mistrial.

RF: Yeah.

LT: And how did you choose the three judges who were in these courts?

RF: I guess they were the most experienced. Uh, I think Hourihane was one and, do you remember who the other two were? Ah, ah—

TS: I know they were the most experienced in the building.

RF: Yeah, yeah. I think Hourihane, and I think maybe Tom Fitz and probably Jim Bailey...they were all hangin' judges.

(Laughter)

TS: Toughies.

RF: They were good guys and so it worked out pretty well.

(29:38)

LT: How did you choose, I know the judges are moved around sometimes, how did you assign judges from other divisions to come to criminal court? Would you be the one, would the Chief Judge be the one to send them or would you?

RF: Yeah, Judge Boyle would.

LT: Okay, okay, so you didn't have any sort of input on that?

RF: No, uh uh.



(29:59)

LD: Do we want to go back a few years and cover those years that you actually heard cases? There were a couple of cases in particular that you, had mentioned earlier that I wanted to ask you about, the Speck case and the Payne case, and then any others that you might think were, particularly memorable.

RF: Umm...I don't know if we had Gacy or not. I think I read a lot of motions with Gacy and uh—

TS: Maybe that's the one I was thinking of. Didn't Bailey get 30 dispositions one day on that?

RF: (Laughing) Yeah. I think it was Bailey, yeah. He tried Gacy... gee there's so many of them, I just can't think of them now...

LT: You mentioned the Payne one, did you want to talk about that one a little bit?

RF: Payne. That was this one here. [Referring to *Newsweek* article]

LT: Mmm-hmm, mmm-hmm.

RF: Yeah, yeah, he... it wasn't a spectacular case, I mean, I forget what he was charged with but I think when the press picked it up, I mean they just picked up a case and it was Payne and they interviewed a public defender and I don't recall, Tony Anesto was one of the prosecutors.

TS: You know they quote the guy from the Center for Studies in Criminal Justice at the U of C law school, said that we really have a criminal justice system is a fallacy, and they were using this as an illustration—

RF: Oh yeah.

TS: The problems you run into in any case. (Coughs) And it's a sociological study here pretty much. *Newsweek*, yeah, "Justice on Trial."

(32:33)

LD: As part of the criminal court again, I'm not sure, I, I'm not a lawyer. So would you hear death penalty cases as a criminal court judge or is that in a different division?

RF: No. If the case warranted death penalty, you tried it.

LD: Mmm-hmm.

RF: And gave it to 'em...

TS: You had a separate deliberation on the penalty.

RF: Oh yeah, you had a separate hearing on the, whether or not it should be a death penalty or just prison time, and I don't recall how many. As I say, I had Speck but I think there was another one somewhere.

TS: There's a picture of you here under the caption Fitzgerald, "Like God would look if God were a judge."

(Laughter)

RF: That was the quote from the public defender. Yeah.

TS: You actually look like Spencer Tracey.

(Laughter)

LT: Oh yeah. Oh gee!

LD: Oh! You do!

(34:02)

LD: Did you have a particular philosophy regarding the death penalty? Did, was it something that you had to wrestle with?

RF: No, I mean if the crimes were that heinous and the, which would warrant a death penalty case, the defendants were probably committing these heinous crimes that most anybody would recommend the death penalty.

TS: And in a jury trial, you'd have the burden taken off of you anyway.

RF: Yeah, that's right. I pretty much—

TS: But did you have death penalty cases that were bench trials ever?

RF: Yeah, yeah, but you would have a separate hearing on the hearings and aggravation and mitigation and based upon all those recommendations you could also give the death penalty or lifetime...

(35:13)

TS: Do you want to say a word about the resources you had that, the pre-sentence report from the probation department. Was it of any use?

RF: Yeah. Yeah, we would get pre-sentence reports which of course would give you both aggravating and mitigation conditions which of course would be helpful to you. Backgrounds of all the defendants so you could take that into consideration along with the crime that he committed.

TS: And there you had the rap sheet that would tell all the prior—

RF: Yeah, tells you everything about the guy so it's, it's sort of a helpful thing.

LT: And that was for every case that you had this?

RF: Yeah.

LT: Okay.

RF: Mmm-hmm, right.

TS: You probably experienced the, as I did, that sometimes you had to put over sentencing since the report hadn't come in yet.

RF: Oh yeah. Right. It was sort of a guideline for you.

TS: Mmm-hmm. You know, you weren't out there working in a vacuum.

RF: Yeah, that's right.

(36:18)

LT: And you mentioned bench trial versus a jury trial. Did you prefer one over the other when you were hearing trials? I mean, was one easier?

RF: Jury.

LT: Jury was easier?

RF: You'd prefer it, yeah.

LT: Yeah?

RF: Let them make up the decision.

LT: (Laughs) Okay.

TS: Did you in your own mind make a decision as to whether you agreed with the jury each time?

RF: Sometimes. Most of the time they were right.

TS: Yeah, that's what I (RF clears throat, indecipherable)

RF: I mean, if they came in with a not guilty why, you sort of shook your head but most of the time they were pretty right. If the state didn't prove their case beyond a reasonable doubt I mean,—

TS: That's what they're supposed to do—

RF: Yeah, that's right, you kick it up...yeah...but it was quite an experience.

(37:14)

LT: We've heard before that the idea that just to mention, just to sentence someone as guilty is even a bigger deal than to actually, you know, whatever the sentence may, if it's a lighter sentence or a more severe sentence but that the fact that someone is declared guilty that's, you know, that's bad enough. I think you were referring to that [pointing to TS], that really, you know, guilt is just about the worst thing that you could do whether or not you get, you know, two years in prison or 20 years in prison. Do you feel similarly to that or do you feel—

RF: Well, it depends upon the crime.

LT: Depends upon the crime?

RF: (Clears throat) And the defendant's background.

LT: Mmm-hmm.

RF: And this ... as I said you have a record of the past crimes and you get his rap sheet and so you take all of these things, put them together, type of crime, maximum/minimum sentences you can give and if it's bad, you give 'em the max. And...pretty much that way.

(38:24)

TS: Did you have an, an opinion, a professional opinion about the wisdom of Thompson's Class X statutory change, meaning a Class X felony, mandatory prison terms in certain cases?

RF: Yeah, he, I don't think we paid much attention to 'em.

(Laughter)

RF: I mean—

TS: I don't think it probably shifted anything you would have done anyway.

RF: I don't think so, no.

LD: Who was Thompson?

TS: The governor.

RF: He was the governor.

LT and LD, almost in unison: Oh, okay.

TS: Big Jim.

LT: Of course. Was this something that he wanted to put into place—

TS: Well, he —

LT: -- or it was put into place?

TS: -- he got it enacted.

LT: Okay.

TS: He was being tough on crime—

LT: Okay.

TS: -- at that point, building penitentiaries around the state.

LT: Sure.

TS: And filling them up.

LT: And so it would be a mandatory prison term for such-and-such crime?

RF: Yeah.

LD: And you just tended to ignore it and, and go with what you had set up as the guidelines?

RF: Sure, our own guidelines, sure. They were the Class X crimes he was talking about.

TS: Yeah, it was something special, I forget what it was.

RF: Yeah.

TS: But it elevated (indecipherable)—

RF: Mandatory prison time.

LT: So this was for certain types of crimes?

TS: Yeah.

RF: Yeah.

(39:48)

TS: What did you think of the war on drugs as it affected the criminal court system?

RF: Well, you know it's a funny thing, I'm, these crimes, inevitably the guys who commit the crimes figure they'll never get caught.

TS: Mmm-hmm.

RF: Now, you can see these fellows who are heads of corporations or dealing in illegal matters and they're no different than the Mickey the Mope who robs the store. I had a kid before me who lived in the neighborhood, went into this store and did the shopping, goes in one Saturday night, and holds the guy up. I mean, you say to him, "Good God, why would you go into the store, hold up a guy who knows you?" He says "I didn't think I'd get caught." Well, you know, that's the philosophy of these big guys and most of the guys who commit the crimes don't expect to get caught. And that's why they do it. And they, they have that thought in their mind, every single one of them. You look at these top echelon guys who, you wonder why in the hell they would commit a crime like that? Here they have the world by the tail. "I don't think I'd get caught and therefore I'll do ya." And I mean every single one of 'em, philosophy: "I didn't think I'd get caught." And boy I tell you, it's a matter that leads a helluva lot of the guys to doing it and they, it's so tempting.

TS: Mmm-hmm.

RF: And there are so, a helluva lot of guys who don't get caught, but the big shots, boy, I tell ya, smart as hell, geniuses, here they are rapping around the, committing crimes.

TS: Bill Scott thought he'd never get caught and then he was in court with his wife on a divorce thing and she said, "What about that safe deposit box full of money?"

RF: (Laughs) Oh yeah, yeah!

(Laughter)

RF: I tell you, that's it.

TS: She, he was trying to avoid it, paying her what she was demanding.

LT: Oh, and she knew that he had money (laughs).

RF: Sure. Yeah.

(42:36)

LT: Going along with, you know, sentencing, do you have any particular opinion about plea bargaining? Do you favor it or not favor it?

RF: Well, yeah, I mean, we, when you have six hundred cases on your call and there's no way you can try all of them and every, practically every case you come in, and the state makes recommendations and defense makes their recommendation and if it's reasonable you go along with it. But plea bargaining is...hell, you couldn't get along without it, because you can't try six hundred cases with more coming in every day and...so you do it.

LT: Umm—

LD: Do you,- oh, go ahead—

LT: Oh, I was going to say, about how many cases would you hear in the course of, I guess a month or a year or, do you know? I mean, I guess it would depend on the type of the crime.

RF: Pretty much the type of case.

LT: Mmm-hmm.

RF: (Clears throat) If you have a murder case, that's going to go to trial.

LT: Right.

RF: If you have an armed robbery, or burglary I mean, you can dispose of those.

(43:55)

RF: Narcotics cases, you can plea bargain those... but right now it's the narcotics cases that I think are jamming up the courts—

TS: That's what I was asking about —

RF: Yeah.

TS: -- running up the system—

RF: But—

TS: -- ruining the system—

RF: It's—

TS: -- you've gotta get rid of 'em, somehow.

RF: Yeah, the narcotics courts weren't doin' it, and there again, it's these guys are peddlin' on the street, but they don't expect to get caught, but they don't have jobs, they don't have an income, they have no way of getting any type of money. Best thing to do, and the easiest thing: get the pot and sell it. And you can't condone it but you can understand why they do it.

LD: When you were on the bench, you said narcotics cases were often times, or even typically, plea bargained as opposed to going to trial or is it just—

RF: Sometimes.

LD: -- is it just that—

RF: All depends.

LD: -- so much, so many more of them now?

RF: Oh, there's more now than ever...yeah...

TS: Do you remember when you got hit by a whole bunch of 'em, and everybody out in the (laughs) courts, the courtrooms were wondering, and he just divided them up and said everybody's got to take so many of these drug cases. (indecipherable) There's just, there's just too many of them, we can't handle them in drug court, everybody's got to take their share.

RF: Yeah, that's right, we had the narcotics courts and they just couldn't handle it.

TS: It was just too much.

RF: Yeah, so...

LT: So you divided 'em up among all the different judges?

RF: Sure.

LT: Mmm-hmm.

TS: He divided them.

(Laughter)

LT: He did! Said here you go!?



RF: Yeah, here you are!

TS: Here are your 20 for today!

(Laughter)

RF: Yeah.

(46:00)

LT: Judge Swain noted before that sometimes it's hard to get to know your fellow judges because of, you know, you're in your courtroom, and then, you know, even when you leave your courtroom, you're still surrounded by a bunch of different people. Did you find that it was difficult to become really close with your fellow judges, that you got to know them really well?

RF: (Clears throat) Yeah, I...of course we had our lunches together.

TS: Yeah, that was unique about the criminal division—

RF: Yeah, it was.

TS: -- that's the only place that happened.

RF: Yeah, so we'd get together over there, in fact they discussed a lot of their problems over the table and everybody would, volunteer advice and so forth but, yeah that was a great area.

TS: Nobody ever went into another guy's courtroom and sat and listened.

RF: No, no, you're in your own fiefdom, and there was... mind your own business.

TS: (Laughs) Yeah.

LD: Were there opportunities to socialize with the other judges? Or did you all at the end of the day just sort of go your own way?

RF: Yeah, pretty much. But of course, as I say, you...when I was sitting, and I'd get down there around eight, eight-thirty, and most of the guys as they come in, stop in and say hello, and what's cookin' and so forth, but other than that, I mean, there wasn't a lot of socializing, we just—

TS: In my courtroom, I would get that from the prosecutors and the public defenders. They'd come in there for my coffee pot, you know—

LT: Mmm-hmm (laughs).

RF: Yeah.

TS: -- find out what was going on for the day.

LT: Right, mmm-hmm.

TS: But not your fellow judges, because everybody was busy doing their own thing.

RF: No, that's right.

TS: They had the full responsibility of their own.

RF: They were busy.

TS: Yeah.

(48:01)

LT: Did you miss hearing cases, hearing trials, once you moved to the presiding judge position?

RF: No, because you kept so busy. (Clears throat) I mean, assigning cases, I mean each morning you get on the bench, first thing you do is assign the cases and...

TS: You assigned all the ones that came in to the 26<sup>th</sup> Street?

RF: Yeah, mmm-hmm, and they, occasionally you had motions but most of the time was assigning the cases and resolving whatever problems that you had in the courthouse.

TS: And you'd have to reassign those where a judge recused himself.

RF: Yeah, they'd recuse themselves. 'Course I sort of cut the water out from under 'em when they were, you'd assign the case on the computer, the judge would say, or the lawyer would say, "I want a change of venue." Well, ordinarily you'd just tell the girl on the computer to reassign it but I got smart and I said, "Let this guy go upstairs," I said, "Make your motion up before the judge. Tell him you want a, "I want a"—

TS: A different judge

RF: -- "a different judge. Recuse yourself." Well, you know, if the judge would say, "No—

(Laughter)

RF: -- "no reason, no basis, you're on trial here," boy, you got four strikes against you.

(Laughter)

RF: So, when you would come in there, and they'd say, "I want a change of venue," you'd say, "Make your motion upstairs." "Well, I'll take the computer."

(Laughter)

RF: So...

LT: Did that lighten your workload a lot when you had the computer or...?

RF: Oh yeah, but of course it meant that everybody was getting a fair shake.

LT: Okay.

RF: We weren't assigning a special case to a friend of ours.

LT: Right, mmm-hmm.

RF: And it was a random assignment and people can't criticize you for assigning cases to your friends because everybody had their dog cases.

(Laughter)

TS: Boy did we.

(Laughter)

RF: You'd go down your list, you didn't have a good one on there.

(Laughter)

TS: When they opened up 13<sup>th</sup> and Michigan those were all new courtrooms—

RF: Oh yeah.

TS: They attracted dogs.

(Laughter)

TS: I mean the judge said, "Okay, I've got to assign so much of my call to this, to one of these new courtrooms. Here, you got 'em."

(Laughter)

RF: Yeah.

TS: But one of the things we were told by more seasoned judges is a case is old, if the case is old, there's a reason why it's old.

RF: (Laughs) Right. Nobody wants to try it.

LT: (Laughs)

TS: There's something the matter with it.

RF: Yeah.

(51:00)

LD: Well, yeah, that does interest me, what would you consider when you were sitting on the bench, what would you consider a dog case?

TS: (Laughs)

RF: Well, a bad rape case, murder, and—

TS: A, just a nasty case—

LT: One of the real particularly heinous crimes?

RF: Sure.

LT: Okay.

TS: That wasn't—

RF: Or you'd—

TS: -- that wasn't gonna settle.

RF: Yeah, or you'd get a Gacy or you get one of those dog cases that went on over six—

TS: Went on over six years—

RF: Yeah.

TS: And the press wonders why.

RF: Right.

TS: Usually somebody's crazy or their attorney's died or something you know—

RF: Yeah.

TS: -- you know, there's always something that explains why its there but...

(51:39)

RF: Tell the story about Jim Bailey who was a clown, real good lawyer—

TS: Good judge.

RF: Yeah, good judge, ahhhh...the case of Gacy was assigned to Judge Garippo and...

TS: (in background) that's the guy I was trying to (indecipherable)

RF: And he had the case at, that they sent, Gacy to his courtroom, and Bailey knew that Gacy was over in the special jail. And so Bailey went on over and picked up a, one of these sheets from the psychiatrists' office and wrote, Gacy is sane now, but was insane at the time of the commission of the crime, which means that he walks. Well, he took this medical report that he jiggered up—

TS: (Indecipherable)

LT: (Chuckle)

RF: He gave it to, sent it on up to Garippo. Garippo looked at it and he says "I gotta release this son of a b, killing all these people! He's sane now and he was insane at the time of the commission of the crime – means he walks!" So he calls up over the hospital and he wanted to talk to doctor, what was the guy over there at the time?

TS: Oh...

RF: So he called him and he said "Who is this Dr. Kalanko?" Well he says, "I don't know." He says, "Why?" He says "That son of a bitch, he just got through with Gacy telling me he was insane at the time of the commission of the crime and he's now in-, he's now sane, that means I gotta let him walk!" He says "The newspapers are full of it, they'll kill me." And he says "Kalanko? I don't have a Kalanko over here." And he says, "Well, I got this report in front of me." He says, "Boy, it's not from our court." So he says "That's God damned Bailey!"

(Laughter)

RF: Bailey used, he took it on up to Bailey, said "You dirty rotten son of a b. Bailey says "Well he's sane, isn't he?" He says "If you ever do this to me again," he says, "I'll kill you, you Irish son of a b!"

(Laughter)

RF: And he walked out. And of course, Bailey was always doing those things. God!

(54:10)

LT: What was it like having all these, you know, if a high profile case, I mean obviously Gacy's one of the most high profile you can think of, but I mean, what was the atmosphere like when you had to deal with a high profile case?

RF: Well, I mean, you just assigned it and they got him up to the courtroom and these guys were able to handle him.

LT: Mmm-hmm.

RF: I mean, we didn't have any cases that anybody couldn't handle, hell, you just took it.

TS: It's unpleasant when the newspapers try the case before it ever gets to the courtroom—

RF: Oh yeah, that's the bad part of it. And they pretrial it. Course you tell 'em, "Listen to the evidence and see what you come up with," but...

TS: You know, it doesn't matter what actually happened, you have to make a decision on what's presented in your courtroom.

RF: That's right.

LT: Mmm-hmm, uh hum, uh hum, right.

TS: And according to the rules too.

LT: Mmm-hmm.

RF: Absolutely.

LD: Are we ready to ask, yeah?

LT: Yeah, sure.

(55:19)

LD: Okay. So you retired, you said, at age 78, and what prompted you to consider retirement, you had been on the bench 27 years. Were there any specific thoughts that you had that prompted you to retire?

RF: No I just (clears throat), just had it I mean —

(Laughter)

RF: After 27 years you know, you want to, you want to look at different oceans and that was the reason and I ended up at Winston & Strawn. It's a big firm, Jim Thompson was over there at the time. Jim and I were good friends. And when I hit 80 I suddenly decided "What the hell are you doin'? 80 years old and you're still up here practicing law? You gotta have holes in your head!" So I went in to see Jim and I said "Jim, I've had it." I says, "I'm 80, I'm gonna get the hell out of here." I said "I don't have much time left." So he says "Well I don't blame you. Go ahead." And he said, "Nothing around here that's prompting you?" I said "No, everybody's been great to me." And so I...

TS: And here you are 13 years later.

(Laughter and indecipherable)

RF: But we, my wife and I, traveled all over the world, hell we must have had 15 cruises and so we enjoyed ourselves. So I got, hell there's no place I want to go, guys are talking about having me go down to Florida with them and I'd just as soon sit on the porch and read or go down there and watch television. And I don't play golf, I haven't played golf in ten years, since my wife was laid up, so... these left handers'd probably beat the hell out of me now.

(Laughter)

RF: So I'm not about to expose myself. But, so, I mean there comes a time in life when, you know, you've had it, I mean the work doesn't necessarily force you out because I was never under that much pressure and I enjoyed doin' what I was doin' and I enjoyed workin' with the fellas I was workin' with. They were all super great guys, all dedicated.

(57:58)

TS: Were you as much of a mentor to the younger guys as you were to my friend, the assessor?

RF: A little bit, you know, you go back to the old psychiatrist, I mean don't try to—

TS: Fix it.

RF: -- fix it. I mean if they ask you a question about procedure and things of that sort, you know, you can guide 'em on because that's something you know something about. When it comes to psychiatric approaches, that ain't your ticket!

(Laughter)

RF: So keep away.

TS: But being there as a friend was always something you did.

RF: Oh yeah, I mean they would ask for counseling, I've, "This is my problem. I've got a problem." The evidence, the state's attorney, public defender, so you, you can counsel 'em on those things because you been through it.

TS: And was that sort of part of your role as presiding judge?

RF: I think a little bit. Every morning at least three or four of the guys would come in.

TS: Mmm-hmm.

RF: And we'd sit down and talk and (telephone rings)

TS: Want me to hand this to you?

RF: Yeah. Hello?

(RECORDED TURNED OFF WHILE JUDGE FITZGERALD TOOK TELEPHONE CALL. END OF AUDIO FILE 2)



(BEGINNING OF AUDIO FILE 3)

TS: ...lifelong friendship.

RF: He's quite a guy, I tell you. He... he has more moxie than... He's always giving me books.

(Laughter)

RF: Just finished the last one. *Lincoln's Wrath*. And, boy, I tell you, it opens your eyes when you figure what happened in 1861. These newspapers, if they were against the war and against Lincoln. They went in, and destroyed the press, destroyed the whole building. Boy, they didn't fool around.

TS: Yeah.

(Laughter)

(0:42)

TS: Isn't that the last time we suspended habeas corpus in this country?

RF: That's right. There was no habeas corpus. And, it was really enlightening. They had one heck of a time. But of course you can understand, I mean here they are fighting a war.

TS: For their survival.

RF: For their survival, yeah. These guys are out there saying you shouldn't do it. People in Maryland, I mean geez, they were all pro-South.

TS: Yeah. You were completely surrounded in Washington.

RF: Sure. Gee, I tell you.

TS: By sympathizers or enemies. Either one.

RF: I can understand. If I was there, I think I'd be torturing 'em myself.

(Laughter)

RF: Do my two to six.

(Laughter)

(1:30)

LT: That's interesting that the judge just called, because I was thinking, I was going to ask you, if you have kept in touch with a lot of the judges since you've retired?

RF: Pretty much, yeah. We...Hourihane is the great adviser. We have occasional meetings with Judge Marovich, Judge--

TS: He's out this way here isn't he?

RF: Yeah. He's out here now. He was up in Lake Geneva.

TS: Oh.

RF: He sold his place and he's over here, a little closer now, with his kids--

(2:05)

TS: He went on the federal bench after he was at 13<sup>th</sup> and Michigan.

LT: Okay.

RF: Yeah. So we keep in touch with quite a few of them.

TS: He knows Republicans.

(Laughter)

RF: Yeah.

LT: Imagine that.

RF: Yeah, how about that?!

LT: And you talk to each other?

RF: Yeah, sure. I tell you. But... Yeah, they're great guys.

(2:34)

LT: And I know you've gotten a lot of awards, it looks like. Are any of these particularly special to you over the years? It looks like, you showed a couple of (indecipherable) and we're going to see some of your memorabilia later.

RF: The, I think last year was the Catholic judge of the year. And then this other one here is, received last year or so. So, that old adage, you can fool some of the people some of the time.

(Laughter)

(3:13)

RF: What is this one here? This is a ... That's the...

LT: For the Illinois State Bar Association?

RF: Yeah.

LT: Board of Governors award.

RF: And this is the one on...

LD: Wow, very nice.

LT: Is this the photo from that presentation?

RF: No, that's the...

(3:42)

LD: That's the John Paul Stevens award?

RF: Yeah.

LD: Yes. And I had made a note to ask about that because this is actually Justice Stevens sitting--

TS: Yeah, the Chicago Bar set that up in his honor. And he comes back for it every year.

LT: Oh, wow.

RF: This is the Governor's award.

(4:01)

LT: Oh, the Governor's award. This is the one that goes with this one. The Board of Governors award.

LD: (reading from plaque) "In recognition of your years of service to the legal profession and your encouragement and mentoring of others to help them to have more productive lives."

TS: Who is this from?

LD: The board of, the Illinois State Bar Association. The Board of Governors award.

TS: Yeah, that's a fair evaluation.

RF: I wrote that myself, that's the only reason.

LT: (laughs) Oh, I doubt it.

LD: Here's that.

RF: Here's some of 'em.

LT: Wow.

(4:51)

LD: What is the criteria for the John Paul Stevens Award?

TS: It's to lawyers, but some of 'em are judges.

LT: Oh, okay.

TS: But, it's for something outstanding.

RF: This is the...

LT: The John Paul Stevens Award one. This is the Catholic... This is the Catholic Lawyers Guild of Chicago.

LD: Mmm-hmm.

(5:18)

RF: That's the cardinal.

LT: Oh, that's you and the cardinal, yes.

RF: I can commit three mortal sins and he'll forgive me.

(Laughter)

LT: Is that what he told you?

TS: That's all? Only three?

(Laughter)

RF: Well, that's because I had so many before.

(Laughter)

TS: Okay. That's fair.

RF: There's Bailey.

TS: Oh my God! (laughs) Yeah. Laughing! Oh these are great.

(5:49)

LT: Oh, this is the gentleman you were talking about who was the escape artist. Gene Lewis.

RF: Yeah, yeah.

LT: That's his name?

(6:03)

TS: When they finished the new building out there and then redid those old, that old space into courtrooms they finally brought us down out there instead of at 13<sup>th</sup> and Michigan.

RF: Oh yeah.

TS: When I got there, I think Garippo just recently left or left shortly after I got there. And it became clear that Bailey was going to use me they way he used Garippo as the butt of his jokes.

(Laughter)

RF: Oh, he's a character. Geez. I tell you.

TS: He had to find somebody who would give it back as good as he got it. I still see him around.

RF: He, he's practicing law with his, with his kids. And...I guess he's doing alright. He's been sick, and not doing too well.

TS: I guess he still got his Popeye Chicken franchises.

RF: Yeah, he still owns that building.

TS: That's amazing. (laughs)

RF: Can you imagine that? I thought that--

TS: I told him it was a conflict of interest. Right across the street from the courthouse.

(Laughter)

RF: That's right.

TS: No place else you can go to get a good meal.

RF: Yeah. Either go to the penitentiary or go in my dog stand.

(Laughter)

RF: I don't know what the hell these are.

LT: I think the letters announcing... that's the one from the Illinois State Bar Association that you're getting the Board of Governors award.

(7:46)

RF: This is Eddie Burke and the city.

LT: Eddie Burke. So you got a resolution in your honor from the Chicago City Council?

RF: Yeah. Big deal.

(Laughter)

TS: Yeah. The hardest part of that is getting on the agenda.

(Laughter)

TS: I don't know they've ever voted one down.

(Laughter)

(8:14)

LT: Did any of your kids go into law, also?

RF: No.

LT: No? They decided not to?

RF: No. Yeah, they're too smart.

(Laughter)

(8:23)

TS: Let me tell you a story about this guy you know about the problems that fall to the chief judge, presiding judge. Gotta keep that clear.

LT: Right.

TS: Chief judge is over the whole thing.

LT: Right, the whole thing.

(8:39)

TS: The presiding judge is... I had a case where a black guy, young black man was accused of raping a white woman. And while that was pending on my call, the attorney walked into, I was at 13<sup>th</sup> and Michigan, the attorney walked into courtroom out at 26<sup>th</sup> Street where my daughter was testifying about her rape case where she'd been raped by a black woman, a black man while she was babysitting. And so the guy came in and demanded I recuse myself because of the similarity of... And I said I wouldn't. I said, "You can't disqualify a judge just because he's a victim of crime. You couldn't get anybody to sit in criminal court. Everybody's been a victim."

(Laughter)

TS: So but, I had, I wrote him a letter, laid it all out. And (indecipherable) said do what think is best.

RF: Sure.

LT: Sounds like you really trusted your judges.

(9:42)

RF: Oh, they were all, there wasn't a single guy out there that wasn't the best. I'll show you that gun down here.

LT: Yeah!

TS: That's the fun one.

RF: Yeah.

LD: Should I continue with this?

(walk downstairs into living room/basement)

LT: Yeah, you might as well bring it down while he tells us about it I guess. Sore leg?

LD: Arthritis in my knee.

LT: Oh no!

TS: You're too young. I have (indecipherable)

(10:20)

LD: Oh, look at that!

RF: There it is.

LT: Wow!

LD: Look at that!

(10:28)

LT: So how did you come in possession of the gun then? How did you get this?

RF: The State's Attorney gave it to me.

LT: Really?

RF: Yeah.

TS: Was that a Bible?

RF: It was a ...

LT: It says Edgar Allen Poe.

RF: Edgar Allen Poe.

LT: *Humor and Satire* on the other page.

(Laughter)

RF: Fantastic.

TS: And just think, defacing a book.

(Laughter)

LT: Yeah. A good Poe book, put a gun in there. And it was loaded. I don't know guns. What type of gun was that?

RF: I think a .38

LD: I was going to say, it looks like a snub-nosed .38

LT: I don't know, I don't know guns.

TS: That's to your credit.



(Laughter)

LT: Thanks.

(walking to other side of basement)

TS: You have a very comfortable living area.

RF: Oh we enjoy it. I picked this up in Marrakech.

LT: Wow.

RF: I had a hell of a fight with the guy.

(Laughter)

TS: Did you bargain?

(11:23)

RF: Yeah, oh yes. The President appointed me to the Harry Truman Scholarship Foundation. We go to Washington four times a week, a year. And...

(11:45)

TS: What sort of scholarships do they... What subjects? Government?

RF: Pretty much.

TS: Yeah.

RF: Whatever they wanted to get into.

(11:54)

LT: Did you meet with other judges then or was it...?

RF: There was the secretary of treasury, the secretary of ... what the hell was he?

TS: Secretary of State George Schultz here.

(12:09)

RF: Yeah. Here's the, this shoe the judges gave me. I was hearing a case. A guy came up from Statesville. And they wear these big boots, shoes, you know. They cut 'em off about here, and sort of make a sandal out of 'em. And I was hearing this case. And geez, I, I looked up and I heard this hell awful 'thump.' And I saw this shoe going at the jury and bingo here was coming one at me. So I dodged, you know. Took the guy and threw him the hell out of the courtroom.

(Laughter)

RF: "What the hell is wrong with you?" He's, "Well, I just got mad that's all."

(Laughter)

RF: And he says, "Judge can I have my shoes back?"

(Laughter)

RF: I says, "If you guarantee me you won't throw 'em, I'll let you have them." He said, "Honest to God, I won't." So I gave him back his shoes.

(Laughter)

RF: The judges all signed that thing.

(Laughter)

(13:21)

TS: Who gave you the 'World's Greatest Democrat?'

RF: Oh! I forget who the hell that was.

(Laughter)

TS: A friend, obviously.

(Laughter)

LT: Not one of your Republican friends?

(Laughter)

(13:33)

RF: No. This is one I got from Illinois State Bar. Let me open it.

TS: On the ledge.

TS: Oh, a medal.

RF: Yeah, I got a medal, too. How 'bout that?

LT: Oh that's another one from the Illinois State Bar.

(13:57)

LD: (reading from letter) "Medal of merit in recognition and appreciation of innovative leadership in improving the judicial system of Cook County and the contribution to the bar of Illinois."

RF: Sure, I wrote that myself.

(Laughter)

TS: And you said you couldn't write.

LT: Yeah!

(Laughter)

TS: You write very well.

(14:19)

RF: That's the Back of the Yards group gave me that.

LT: Which, the bust of Kennedy?

RF: Yeah.

(14:29)

LT: I was looking at this bottle of whiskey over here or something. Says 'Happy Birthday.'

RF: Yeah.

TS: You haven't gotten it very far down.

LT: No!

RF: That's all diminished by itself.

(Laughter)

TS: Yeah, evaporation. Shrinkage.

(14:45)

RF: Here was the, you probably don't remember. This guy.

LT: Terrible Tommy.

RF: Tommy.

LT: Tommy O'Connor.

(14:58)

RF: Tommy O'Connor. He was THE outstanding hold-up man in Chicago. This is the...He was sentenced to hang, and they had the gallows out there in the county jail. And of course he escaped, so the gallows were still up there. And so they couldn't tear 'em down. So they came to me while I was still up at 26<sup>th</sup>, and the, this is the thing that pulls out--

TS: Oh dear.

RF: It opens up—

TS: The trap door.

RF: --the trap.

LT: Oh wow!

LT: (reading from object) "Built for Tommy 55 years ago, Tommy then decided to blow."

TS: (reading from object) "Scaffolds were destroyed in '77, did you make it to heaven?"

(Laughter)

LT: Tommy did you make it to heaven? Oh wow.

RF: Sheriff gave me this.

TS: That's great.

(Laughter)

(16:00)

LT: And they never found him?

RF: No, never did.

LT: Wow.

RF: Quite a guy... What I did was all these plaques and things that I got, I've got an island up in Canada—

TS: Uh huh.

RF: --and we, my son goes up there quite a bit now, so I told him, "Take all these damn plaques, put 'em up on the wall up there." I says, "I don't want to see 'em anymore. We got no room for 'em here at the house." So he did, so they're all up there.

(Laughter)

TS: That's better than a moose head or something.

(Laughter)

RF: That's right. Yeah. Let's see...Captain, or Admiral Gallery gave that...

LD: (Reading from plaque) From the Commanding Officer of the recruit training company at Great Lakes. Huh!

RF: Oh yeah, I gave the speech up there for 'em.

(17:02)

TS: Do you work out? [TS was looking at treadmill in RF basement].

RF: I, ten minutes a day—

TS: Well, that's—

RF: -- I haven't since I got a fibrillator here—

TS: Oh, you do—

RF: -- they gave me. So they said, "Wait a couple of months before you get on there." But I, ten minutes a day—

TS: Yeah, that's good.

RF: -- is good enough.

TS: Yeah, keeps the blood flowin'.

RF: Yeah.

(17:25)

LD: Did you want to show us your degree from, your honorary degree from John Marshall?

RF: Oh yeah. It's sittin' right up here.

LD: Okey-doke.

RF: This is all my garbage.

(Laughter)

LT: The ones that didn't make it up to Canada? (Laughs)

RF: Yeah.

LT: This is (reading from plaque) John Marshall Law School Honorary Doctor of Laws. It's from 1980. Very nice.

RF: Just goes to show you I can even fool John Marshall.

(Laughter)

TS: What's the J?

LT: Richard J. Fitzgerald. What's the J?

RF: Yeah. James.

LT: James?

TS: James.

LT: Was that your father's name or someone else's name?

RF: Yeah. My dad's name is James.

LT: Was James.

RF: Well, I'm not gonna go through all that...

Laughter and indecipherable.

RF: Enough is enough.

LT: Right. Great.

(18:28)

TS: Did Hourihane give you the John Adams biography?

RF: Well, I haven't started that.

TS: You have the McCullough book?

RF: Yeah. Have you read it?

TS: No, I've read, you know, I pretend to be literate by reading the book reviews.

(Laughter)

RF: Well you're better off than I am.

TS: No, it was quite a... Do you know the story behind this bunch of biographies of John Adams? Has to do with the danger of appointing a literate person to a job that should be held by a bureaucrat. The Massachusetts Toll Highway Commission had a, somebody that was literate as its chairman. They came, laid out the route of the Massachusetts Tollway, and it went right through the middle of the Adams family farm.

(Laughter)

TS: And the guys, the designated family member did show appropriate outrage: "We are a national, sacred symbol. You can't do that to us." He said, "Well, we can if we want, but I'll tell you what I'll do. I'll make you a deal." And the guy looked at him and said, "What's the deal?" Said, "You people have been sitting on the Adams family papers for 200 years, and won't let anybody at them. If you will release them for publication, we'll re-route the turnpike."

(Laughter)

RF: Is that right?!

TS: So they did—

RF: Is that right?!

TS: And the papers suddenly became available for—

RF: Well, I'll be.

(Laughter and indecipherable.)

LT: And all these Adams books since (laughs).

TS: Be careful who you appoint to bureaucratic positions.

(Laughter)

RF: Yeah, that's right.

LT: This is the Spencer Tracey picture.

LD: Mmm-hmm.

(Laughter)

LT: "Like God would look if God were a judge."

(Laughter)

LT: In your own little plaque.

TS: Has it been a good summer on your porch?

RF: Oh yeah.

TS: I would think so.

RF: Just great.

TS: Yeah.

(20:31)

TS: Does your fibrillator allow you to have a little nip in the afternoon sometimes?

RF: You know, I'm only drinking wine these days.

TS: Uh huh.

RF: I generally go down to Shaw's and have lunch with Bailey and Marovich and the gang —

TS: Mmm-hmm.

RF: --and I have a glass there. And, (laughs) Hourihane and I and Marovich were having lunch at Shaw's, and I had a glass of wine, and those are huge glasses—

TS: Oh, they do.

(Laughter)

TS: They're generous.

RF: --so, I had a glass of wine and Hourihane said to me, he said, "You know," he said, "I'm the dumbest son of a bitch in the world." He says, "Here I am riding in the car with a 92 year old judge"—



(Laughter)

RF: --“half-stiff”—

(Laughter)

RF: -- “in the Loop of Chicago”—

(Laughter)

RF: and he said, “I can’t imagine any sane man doing what I’m doing.”

(Laughter)

RF: So I said, “Well you stupid son of a b.”--

(Laughter)

RF: --I said, “You were never in such good hands in all your life!”

(Laughter)

RF: But, I mean, he’s coming out tomorrow he said—

TS: Oh good.

RF: -- so...

TS: Does he get out here occasionally?

RF: We get out...I used to go into Shaw’s every week—

TS: Yeah, I remember that—

RF: -- and, uh, but—

TS: -- the drive gets a little—

RF: -- the Dan Ryan now is an hour to get in —

TS: -- yeah, so that’s too much

RF: -- so I figure, why the hell should I break my rear-end to go down and listen to those guys pontificate?

(Laughter)

RF: Telling a bunch of lies, insulting me, and then have the audacity to have me pick up the check!

(Laughter)

RF: I said, "Boy, talk about insult to an injury—

(Laughter)

RF: -- they really hang it on, but uh...So I go in maybe once a month—

TS: Mmm-hmm.

RF: -- and Hourihane comes out and George Marovich comes out quite a bit, and we go out to one of the local restaurants. And it's good.

TS: Good.

RF: Would you care to have a touch of wine on your (indecipherable)?

LT: Oh, no thank you.

(Laughter)

RF: Okay

LT: Very tempting, thank you. (Laughs).

(23:07)

LD: Are there any other reflections on the American justice system that you'd like to offer us before we wind this down?

TS: Which way is it going?

(Laughter)

RF: Well, I think the additions to the Supreme Court, the last two appointments, were excellent.

TS: Yeah.

RF: And I think that the Supreme Court has been handling the cases that have been coming before them in a manner that I certainly approve of.

TS: Very professional.

RF: Very definitely. And, of course, they don't ask me, they go ahead and decide 'em anyway.

(Laughter)

TS: Well that's an oversight.

(Laughter)

RF: Yeah, they call me after they decide. But, no I think the judicial system in the United States is excellent and we have some outstanding members on that Supreme Court and I think our own Supreme Court [referring to the Illinois State Supreme Court], Tom Fitz and those kids, are doing a wonderful job. And I think Tom's background warrants that he have a broad view on the cases that come before him, sitting in the criminal court. And he's very knowledgeable, and—

TS: Do you know Anne Burke very well?

RF: I met her a couple of times, yeah. Now she is a, she's going to be an outstanding judge.

TS: (Indecipherable) everything she's done, she's done well.

RF: She has. Appellate Court she did well, and, of course her husband, Eddie, is quite a guy. I like Ed.

TS: Yeah, he's charming.

RF: He is. He's not the typical alderman in the city—

TS: No, no.

RF: --of Chicago.

(Laughter and indecipherable.)

TS: Not by a long shot. He's not Vrdolyak.

(Laughter)

RF: No. I understand Eddie's in trouble.

TS: That's what I hear.

RF: Yeah. You know, I had, I knew Eddie, oh God, 20 years ago,--

TS: Oh really?

RF: -- and Steve Shiller invited me up to the hotel, he lives there, up in the Near North Side,--

TS: Mmm-hmm.

RF: -- and he and his brother and this other fellow were there and I was trying to figure out who the hell this guy was, and it was Eddie Vrdolyak.

TS: Oh my.

RF: And here we were having lunch. Now I hadn't seen Eddie in 20 years, but he's got heavy jowls—

TS: Jowl—

RF: -- and I didn't recognize the guy. I was lunching with him for half an hour before I finally decided who the hell he was.

(Laughter)

TS: You didn't have to ask, you finally figured it out.

RF: What a hell of an insult to Eddie Vrdolyak, yeah. But, he does a great job. I don't know whether I've answered you question or not—

LD: Mmm-hmm, yeah.

RF: But, no, I've got a lot of respect for the Supreme Court. They have some tough, toughies—

TS: Tough calls. Tough calls.

RF: -- yeah...

(26:47)

LT: What about the Cook County justice system? Do you think they're in pretty good shape?

RF: I think by and far, you know, you get some weak ones in there, the majority of the guys are, I think, pretty well qualified—

TS: Mmm-hmm.

RF: -- and they try to do a good job. They respect their positions, and they, most of them, act like judges should. And, as I say, you're always going to find one or two out of 180 judges that are falling by the wayside.

TS: Or any other group.

LT: Mmm-hmm.

RF: That's right, or any other group. God, look at the Congress.

(Laughter)

TS: I try not to. (Whistles)

RF: I tell you. Here's another situation where, "I thought I could get away with it."

TS: Yeah.

RF: "I didn't think they'd catch me."

TS: Yeah, and why they thought...

RF: And it's, you look at 'em and you just say to yourself, "there's the typical"—

TS: Yeah.

RF: -- "there's the typical." And it's...

TS: Well I've always had the opinion that our criminal justice system was excellently set up to catch dumb criminals.

(Laughter)

RF: (Laughs) Yeah, that's right. We could be stupid and still outdo them.

(Laughter)

RF: (Coughs). Yeah.

TS: You never know how many smart ones there are out there, but the dumb ones we all see in the courtroom.

RF: Yeah, the smart ones we don't catch.

LT: (Laughs) Yeah, like Tommy O'Connor there, the one who escaped from the gallows.

RF: Yeah, he was, back in the 20s he was the Al Capone of his day. And they never did catch him. Gosh...

TS: Who was the guy that did this Suzanne Degnan murders way back? At the University of Chicago?

RF: Oh, the...

TS: Richard somebody...He was--

RF: Two brothers—

TS: -- no, oh that, no, not the earlier one, the Leopold and Loeb,--

RF: Oh no?

TS: -- this was a single guy and he just came up for parole again recently but they—

RF: Turned him down?

TS: --yeah. What was his name? It was one of those things that dominated the news for six months in town here...

RF: Boy, my memory is...

TS: Well, it's about on the par with mine. (Laughs)

(Laughter)

RF: I tell you, I...should know because we went up to Danny Wild's funeral up at the University of Chicago—

TS: Oh yeah.

RF: --and we drove around that campus. It's the first time I've been inside the campus.

TS: Mmm-hmm.

RF: That's the most fantastic place in the world. Good Lord Almighty! Building after building, after building.

TS: It's incredible. Every place they can find a square foot of ground—

RF: Yeah, and they're building more—

TS: Yeah.

RF: Good Lord!

TS: That new business school—

RF: That's fantastic isn't it?

TS: Yeah.

RF: Geez, I tell ya. But...

TS: What happened to Danny Wild? I didn't follow that?

RF: He died about two months ago.

TS: Of what?

RF: We, they don't know—

TS: Oh.

RF: -- I've never heard, but I think it was a heart--

TS: Uh huh.

RF: --he had some problems. In fact, I was supposed to have lunch with him on Wednesday—

TS: Oh my.

RF: -- and he died on Monday.

TS: Geez.

RF: But...fantastic guy.

TS: Yeah. He worked with Thompson.

RF: Yeah.

TS: Yeah.

RF: He and Thompson were very, very close.

TS: Yeah, that's what I heard.

RF: And, in fact, Thompson had his inaugural party down at the State House in the mansion—

TS: Mmm-hmm.

RF: -- and Danny and his mother and dad were down there, and they invited Ruth and I—

TS: Oh really?

RF: --so we went on down there with the Thompson's.

TS: Mmm-hmm.

RF: His wife is a very pleasant woman.

TS: Yeah. I never knew her but—

RF: Oh yeah, she's smart as hell--

TS: -- but I heard (indecipherable)—

RF: --she's smarter than he is, I think.

(Laughter)

TS: It's often the case.

(Laughter)

RF: (Laughs) Yeah. The woman is always the leader of the tribe.

(Laughter)

TS: [Speaking to LT and LD] So you gotta, you exercise restraint in exercising your power.

LT: (Laughs) Yeah.

TS: Be kind to us.

LT: Just (laughter and indecipherable)



RF: What year're you in?

LT: Well, we're graduate students.

RF: Oh, you are graduate students?

LT: So yes, we just started graduate school--

RF: Oh, oh.

LT: At Loyola.

TS: History students.

LT: Yes, public history. So we're in oral history class at Loyola and that's what we're doing, this is part of that oral history class so... Judge Swain knows Dr. Manning there. They've been working together on this project.

RF: Oh yeah.

TS: It's the only person I know that ever got married with two judges. Jim Henry, who's the, do you know Jim at all?

RF: Yeah, I've—

TS: He's—

RF: -- he talked to me a couple of times on getting together but—

TS: -- yeah—

RF: -- we never did.

TS: --but, he did the main ceremony. I was sitting in the back of the chapel, in case he faltered, I would be prepared to—

(Laughter and indecipherable)

TS: -- for Professor Manning. He got married during the middle of this project.

(Laughter)

RF: Oh great.

LT: I can't think of any other questions.

LD: Nor can I—

TS: (Indecipherable)

LD: -- so this will end the interview. We can contin...

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## Appendix I

### Articles

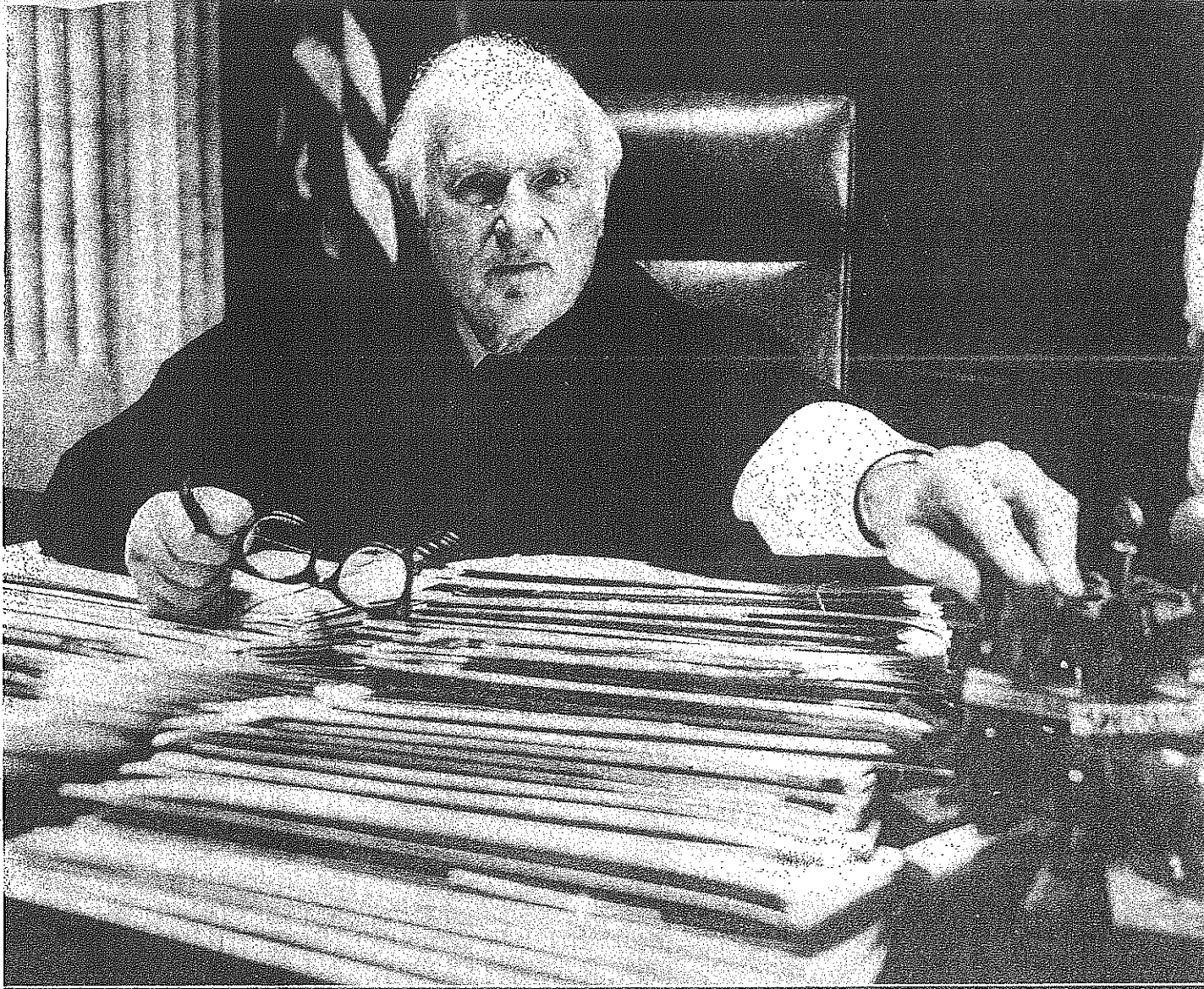
During the interview, Judge Fitzgerald showed some of the awards and memorabilia he received during his career and after his retirement. In addition, he presented four articles which incorporated some mention of him. Liz Trantowski and Lisa Davis have included photocopies of these articles. The four articles are:

Demaret, Kent. "A Tough Chicago Judge Shows How to Throw the Book at Repeat Offenders—And Make It Stick." *People*, June 27, 1983, 37-38.

Goldman, Peter and Don Holt. "How Justice Works: The People vs. Donald Payne." *Newsweek*, November 8, 1971, 20-37

"Between a Rock and a Hard Case." *Time*, October 13, 1980, 73

"CBA News: Six Prominent Attorneys Receive 'Justice Stevens Awards'" *Chicago Bar Association Record*, November 2001, 22



TO THE **Top**

Fitzgerald's small arsenal of rubber stamps helps him speed through Rock Court's staggering load of 70 cases a day.

## A TOUGH CHICAGO JUDGE SHOWS HOW TO THROW THE BOOK AT REPEAT OFFENDERS—AND MAKE IT STICK

**A** troop of manacled prisoners recently making their way out of a Chicago courthouse passed a dapper, white-haired gent in the hallway. "Who's that dude?" asked one hawk-faced con, nodding toward Judge Richard Fitzgerald, 69. Cautioned a handcuffed buddy: "Man, that's Father Time."

To hardened felons, Fitzgerald's name indeed means time—the kind spent waiting for a file in a cake. As the creator of Chicago's "Rock Court" (from the jailhouse acronym for Repeat Offenders Court), the judge instituted a system of quick-step trials and stern sentencing that is fast becoming

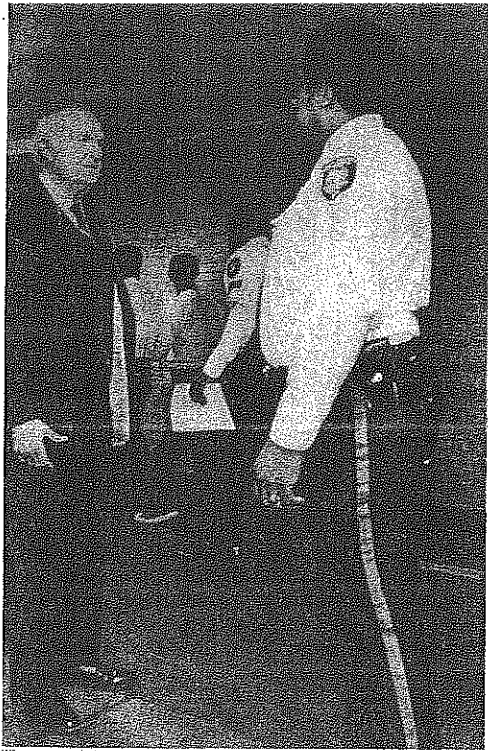
a national model. At least 15 states are now studying his Rock Court's no-nonsense, slam-the-door approach to justice.

Repeat offenders became a Fitzgerald fixation in 1977 when the longtime Democrat, known throughout his career as a liberal, was appointed presiding judge of the Cook County Circuit Court's hard-pressed criminal division. He soon discovered that over 70 percent of the armed robbers, rapists, burglars and car thieves appearing before his judges were ex-convicts back for an encore. Yet overloaded dockets and the defendants' right to demand time-

consuming jury trials led to plea bargaining, and a reduction of charges, in nine out of 10 cases. Many of the criminals would soon return to court charged with yet another crime, and the whole process would begin again.

"Repeat offenders are, sad to say, pathological when it comes to committing crime," asserts Fitzgerald. "They won't stop unless they are made to stop. So if they are going to be career criminals, we'll give them certain and swift sentences and keep them off the streets. And we'll keep it up until we dry them out, until they get old enough so they are no longer a threat."





**"Father Time," here on a visit to county jail, says, "The bad ones know that in Rock Court we play hardball."**

To make his plan work, Fitzgerald set up the Repeat Offenders Court—though, to avoid pretrial bias, it is not publicly identified as such to potential jurors—and assigned four of his 42 judges to it. Then he ordered prosecutors to speed up their pretrial preparations and come to court ready to face a jury. The Illinois State Legislature, after listening to Fitzgerald's testimony, passed laws calling for tougher, mandatory prison sentences for most repeat felons and life without parole for those judged to be habitual criminals.

Thanks to the speed-up, says Fitzgerald, Rock Court cases are completed in half the time of regular criminal trials. Plea bargaining has been reduced by 25 percent, and the conviction rate is now a remarkable 90 percent. When critics complained that the new hurry-up courts were violating defendants' rights to due process of law, Fitzgerald invited the American Civil

Liberties Union to examine the court thoroughly and to challenge it if they found anything wrong. "They looked it over," he recalls proudly, "and decided not to challenge."

Still, there are those who question the system. Keith Davis, a Chicago criminal defense lawyer and the chairman of the Criminal Justice Committee of the Chicago Council of Lawyers, says, "The principle of the court is a bad one, because in most cases the identifying of a defendant as a recidivist is inadmissible in court. In Rock Court, it's easy for a juror to hear from a guard or another juror that this is a repeat offenders' court, and that deprives the defendant of a fair trial."

In other respects, however, the Rock Court may be working too well. The stream of new convicts into already crowded prisons may prompt Illinois penal officials to give more felons time off for good behavior. That would defeat the whole purpose of his reforms, argues Fitzgerald, who believes bigger prisons would be a better answer.

In his youth, Father Time spent more time on the field than on the bench. The son of a Chicago bailiff, he played his way through St. Louis University on a football scholarship and later spent two years playing pro football with the old St. Louis Gunners after earning his law degree at his alma mater. After a career as a banking specialist, he quit private practice in 1964 to serve as a divorce court judge. One year later he moved to the criminal courts.

As he has for years, Fitzgerald arrives at his office by 8 a.m. after attending early Mass. Handball three times a week has kept him fit, and at night he relaxes with a good read (biographies of Churchill are a favorite). He and Ruth, 70, his wife of 42 years, share a sprawling home in suburban South Holland, Ill. and have two grown sons and six grandchildren. Although Fitzgerald claims he'd like more time to spend with his family—and at the five-acre fishing island he owns in Canada—he insists he'll stay on the job until his present term expires in 1985. To Fitzgerald's fans, the implications are clear. Before their favorite judge retires to his island, more career criminals will be heading back up the river.

KENT DEMARET



**Fitzgerald (at home with granddaughter Danielle, 6) baits up to go fishing at the man-made pond adjacent to his home.**

# HOW JUSTICE WORKS:

## The People VS. Donald Payne

By Peter Goldman and Don Holt

*The first time I walked into the Criminal Court Building, that odor hit me. That combination of sweat and onions and Polish sausage. I wanted to turn around and come out. I saw a guy I knew in law school and I said, "What the f--- is that smell?" And he said, "That's tears."*

—Constantine Xinos, an assistant public defender for Cook County, Ill

**I**t is a melancholy place, flyspecked and grimy, a Hollywood-Egyptian temple squatting heavily and incongruously among the factories, the freight yards and the slum housing projects on Chicago's roiling West Side. Its out-of-the-way location is a monument to the failed business instinct of the late Anton Cermak, the Chicago politician who opened the building on April Fool's Day, 1929, in hopes of sparking a real-estate boom in his home ward. The boom busted, and only the courthouse and its neighbor of convenience, the Cook County Jail complex, are left of Cermak's vision. Through its cavernous courtrooms have passed generations of Chicago's outlaws and outcasts—a faceless succession of bootleggers, bookies, hit men, drifters, thieves, whores, petty Mafiosi and lately the black young so thickly involved in the crime of the city streets. In its corridors, in the smell of food and sweat and tears, the People of Illinois through their agents—the police, the prosecutors, the lawyers, the judges—labor imperfectly toward a rough approximation of justice.

An 18-year-old named Donald Payne came handcuffed and sullen into the building last year—a tall, spidery, black dropout charged with the attempted armed robbery and attempted murder of a white liquor-store owner in a "changing" fringe neighborhood. The police report told it simply: "... At 2100 [9 p.m.] ... Aug. 4, 1970 ... victim stated that two male Negroes entered his store and the taller of the two came out with a gun and announced that this is a holdup, 'give me all of your money.' With this the victim ... walked away from the area of the cash register. When he did this, the smaller offender shouted 'shoot him.' The taller offender aimed the pistol at him and pulled the trigger about two or three times. The weapon failed to fire. The offenders then fled ..." It was a botched job—nobody was hurt and nothing stolen—and so Payne in one sense was only another integer in the numbing statistics of American crime.

But the case of the People vs. Donald Payne was in

another sense central to the malaise of the nation's decaying big cities. Street crime has contributed powerfully to that malaise—and street crime in urban America has become in large and growing measure Negro crime. The subject has until lately been thought too painful for public discussion; to raise it has been considered treasonable among blacks and racist among sympathetic whites. But the statistics command attention. One little-noted staff study for Lyndon Johnson's commission on violence showed urban arrest rates ten to eighteen times higher for Negroes than for whites in serious crimes of violence—and up to twenty times higher for black teen-agers. Another, a seventeen-city survey, found blacks suspected of 72 per cent of the criminal homicides, 74 per cent of the aggravated assaults, 70 per cent of the rapes and 85 per cent of the robberies in which the police made arrests. To acknowledge these figures is only to recognize the effect on Negroes of years of poverty and discrimination in what the Negro sociologist E. Franklin Frazier once aptly called "the city of destruction." To suppress the figures is to ignore not only the fears of white people but the pain of the blacks who are the victims of the vast majority of black crime.

Donald Payne's passage from stick-up to station house to jail to court and finally into the shadow world of prison says more than any law text or flow chart about the realities of crime and punishment in America. The quality of justice in Chicago is neither very much better nor very much worse than in any major American city. The agents of justice in Chicago are typically overworked, understaffed, disconnected, case-hardened and impossibly rushed. Payne protested his innocence to them every step of the way, even after he pleaded guilty. There is, given the evidence, no compelling reason to believe him, and no one did—least of all the lawyer who represented him. So the agents of justice handed him and his case file along toward a resolution that satisfied none of them wholly. "That we really have a criminal-justice system is a fallacy," remarked Hans Mattick, co-director of the Center for Studies in Criminal Justice at the University of Chicago Law School. "A system is artificially created out of no system. What we have is a case-disposition system." In the winter of 1970-71, the system disposed of People vs. Payne—and the sum of Donald Payne's case and tens of thousands more just like it across the nation is the real story of justice in America.



Photos by Jeff Lowenthal

Payne being fingerprinted: Laboring imperfectly toward a rough approximation of justice

## THE DEFENDANT: 'Too Much Happening'

He was one kid at home and another in the street. At home, he was straight—nice-mannered, his stepfather said. Puttering with a radio. Funning with the family. Church on Sunday—well, maybe next Sunday—and school on Monday, sometimes. On the street, he was cool. Six-one and sharp: sky-blue suit, brown shirt and tie with matching white-stitched crowns, brown side-buckle loafers, hair growing out in a 'Ero an inch and a half high. Walking that liquid walk—*diddybop diddybop*—and talking that languid talk. Shucking on the corner, jiving with the chicks, messing with the Man. *Everybody do something wrong sometime*. Cool.

They fought over Donald Payne, home against street, a war of the worlds recapitulated ten thousand times every day in the ghetto; only, when you live in a ghetto, you can never get far enough away from the street to be sure of the outcome. Payne's mother tried. Her first husband deserted her and their four kids when Donnie, the baby, was still little. But she kept them together and, thirteen years ago, was married to Cleophilus Todd, a dark, rumbly-voiced man who preaches Sundays in the storefront Greater Mount Sinai M.B. (for Missionary Baptist) Church and works weekdays to keep his family and his ministry afloat. She bore two more children and worked some of the time to supplement the family's income; and two years ago they were able to put enough together to escape the gang-infested section where Donald grew up and move into a little green-and-white frame house in a fringe working-class neighborhood called Roseland.

The house is lace-curtain Negro, carpeted and overstuffed and warm; there is a Martin Luther King souvenir plate on one living-room wall and, on another, a framed mirror with china figurines on shelves and a motto at the top—HAVE FAITH IN GOD. But it may have

come too late for Donald. He had already begun sliding out of school: it bored him. ("They'd be repeatin' the same things over and over again, goin' over the same thing, the same thing") so he started skipping, and when the school called about him, he would pick up the phone and put it back on the hook without saying anything. *Maybe I thought it was too much happenin' out there in the streets to be goin' to school*. Or church either. "They have to go to church long as they live with us," says Cleophilus Todd. For years, Donald did: he spent his Sunday mornings in the peeling, blue-curtained storefront, shouting gospel in the choir, listening to his stepfather demanding repentance of a little congregation of women and small children in the mismatched, second-hand pews and hardwood theater seats. But it got claustrophobic on Mount Sinai. "I just slowed down," Payne says. "I started sayin' I'd go next Sunday, and then I wouldn't. And then I just stopped."

The street was winning. Payne showed a knack for electricity; he made a couple of lamps and a radio in the school shop before he stopped going and brought them home to his mother, and she would ask him why he didn't think about trade school. "He could fix everything from a light to a television set," she says. "He was all right as long as he was busy. Only time you had to worry about him was when he had nothin' to do." He did work sometimes, two jobs at once for a while, and once he talked to a man working on a house about how you get into electrical work. The man told him about apprenticeships and gave him the address of his union. "But I just hated to travel. It bored me even when I was workin'—I just hated to take that trip. So I kept puttin' it off and puttin' it off." He looked down. He was, at the moment he told the story, handcuffed to a chair in a prisoner's room in the Criminal Court Building, en



The scene of the crime: 'You can't cope with the colored'

route to the penitentiary at Joliet. "And then this."

Nobody knows, really, why the street swallows up so many of them. Poverty in the midst of affluence is surely part of it, and color in the midst of whiteness; so are heroin and broken homes and the sheer get-it-now impulsiveness of life in so empty and so chancy a place as a ghetto. But no one can say which ones will go wrong—why a Donald Payne, for example, will get in trouble while three brothers and two sisters come up straight. "I told 'em all," says Todd. "I'm not going to be spending all my time and money on jail cases for you doing something you don't need to get into." Only Donald got into it. He is an oddly detached and distant youth, too much the loner to have fallen in with the fighting gangs—the Black P. Stone Nation (nee the Blackstone Rangers) or the Disciples or the Gangsters—or even to have run with the kids on the block snatching purses for the sport of it. "I don't indulge in such activities," he says with a mocking formality, and his old friends from the block confirm it. Still, he did get run in a few times for disorderly conduct, routine for kids in the ghetto street. And, in 1968, he was arrested for burglary.

It was a kid-stuff, filling-station job, two tires and a sign, and Payne was caught with the tires a few blocks away. He insisted he was only trying to help a friend sell them, but Todd says he confessed to the family ("Sometimes it makes no difference how good a kid is or how good he is brought up") and he wound up pleading guilty in a deal for a few days in jail and two years on probation. It came to little: probation in theory is a means to rehabilitation, but probation offices in fact, in Chicago and around the country, tend to have too many cases and too little time to do much active rehabilitating. Payne's papers were lost for several months until he finally got scared and came in to find out why no one had called him. After that, he reported once every month, riding two hours on buses to see his probation officer for ten minutes. "We talked about was I workin' and how was I doin' out on the street"—that was all. Once the probation officer referred him to a job counselor. Payne never went, and no one seems to have noticed.

And now, at 18, he is in big trouble. Meeting Donald Payne, handcuffed in his chair, one is struck first by the remnants of the child: the shy flicking eyes, the dark slash of acne, the bravado tilt of the head, the

low, loose-jointed slouch, the habit of blaming all his past, present and future difficulties on somebody else. "I have no say-so over it." But there are uncomfortable glimpses of the man as well: the flicking-eyes challenge the half-smile dares, the manner says, "I'm cool, I'll be back." The people Payne met in his progress through the system saw it and put it down as scorn, or belligerence, or braggadocio, or just plain trouble. Or maybe it was the final victory of the street. "Donnie was one child I never really knew what to do with," his mother sighs; one wonders now whether there can ever be a second chance.

## THE VICTIM: 'They're Chasing Me Out'

A voice said, "I want that." Joe Castelli looked up from the till, and there across the counter stood this tall colored kid with an insolent grin and a small-caliber, blue-steel automatic not 4 feet from Castelli's face. Castelli can't remember now what he thought in that split second; maybe it was how he had worked behind that counter for 24 years and how all of it was slipping away. *The colored are chasing me out.* The thought haunts him still, and so does the image of that pistol. And now, sometimes, Joe Castelli wants to kill somebody.

Castelli was 24 when he went to work for Shop-Rite Liquors, an Italian kid clerking in a mostly Irish section on Chicago's South Side. He worked behind the counter for fourteen years, then—when the owner decided to retire—scraped together the money to buy the store and the connecting neighborhood bar. He installed flashing blue, white and orange lights and a big electric display sign outside, brightened the interior with fluorescent and pink paint and stocked his supermarket-style shelves with bread, milk and canned goods along with the booze and beer. His tradé was mostly with the old Irish—the cops, the firemen, the sanitation workers. "Real family people," he says. "They come in and buy one or two quarts of beer. I can count the number of fights we've had in here on one hand."

Now he is 48, going gray and thickening around the middle, and he has begun thinking ten years ahead to his own retirement. But his options seem to him suddenly narrowed by blind demographic forces he can neither control nor completely comprehend—by the quickening scramble of the blacks south and west out of the brawling, gang-ridden ghetto called Englewood. Castelli's store is on the west side—the white side—of Ashland Avenue, the north-south artery that held for some years as a boundary between the races. Now that thin divide is crumbling; the younger whites have begun pulling out, deserting the trim one- and two-family houses to the first upwardly mobile Negroes and the last middle-aged Irish whose lives and fortunes are sunk in their homes. The neighborhood is "changing," and Castelli doesn't like it. "You can't cope with the colored," he says, a frown darkening his round, brown eyes. "They're animals. Animals."

The blacks no less than Castelli himself are only struggling for air, but the view from behind the counter is narrow and a bitter one; urban crime counts more there than urban sociology. The thrice-told tales fly endlessly between Castelli and his clerk, Fred DeAngelo, a chain-smoking man of 58 with stained fingers and a narrow, leathery face. Tales of the colored kids whose only ID is their jail-discharge papers. The young man who flared menacingly—"What you mean?"—when Joe amiably called him "lad." The fellow who lugged a whole case

\*The names of "Castelli," his store and his clerk have all been changed at his request.

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of Scotch into the cooler, emptied it into a shopping bag and walked out. ("The police stopped him," DeAngelo says, "but all they did was kick him in the pants and send him back across Ashland.") The one who filched a bottle, set it on the counter, laid a machete alongside it and asked for a bag to wrap it in. The one who came in every day to buy a can of beer and steal a bottle of Scotch. The endless petty pilfering. "They stick a bottle in here"—Castelli tugged out the waistband of his trousers in front and dropped an imaginary fifth inside—"and all you can do is take it out of their pants. We maybe had that four times a day—we don't even know. These men can go to ten, twenty, thirty stores a day, and you gotta take the loss."

And finally the tall one with the blue-steel .25 and the scornful half-smile—the one Castelli identified later as Donald Payne. He and another, smaller youth came in the out door that cool August evening, just as Castelli was stuffing \$250 or \$300 in receipts from cash register No. 2 into his pocket. "I want that," the tall one said. Castelli edged away. "Shoot him! Shoot him!" the small one yelled. The tall one stared at Castelli and poked the gun across the counter at him. "Mother f---er," he said. He squeezed the trigger, maybe once, maybe two or three times.

The gun went *click*.

The two youths turned and ran. Castelli started after them, bumped against the end of the counter and went down. He got up and dashed outside, but the youths disappeared down a dark alley. An old white man emptying garbage saw them go by. The tall one pointed the pistol toward the sky and squeezed again. This time it went off.

A clerk from across the street came over and told Castelli that a woman had seen the boys earlier getting out of a black Ford. "People around here notice things like that," Castelli says. "They watch." Castelli found the car parked nearby and wrote down the license number. The driver—a third Negro youth—followed him back to the store. "What you taking my license for?" he demanded. "I was just waiting for my wife—I took her to the doctor." He stood there yelling for a while, but some of Castelli's white neighbors crowded into the store, and the black youth left. Castelli went back into the street, flagged down an unmarked police car he recognized and handed over the number, and the hunt was on.

Castelli made some changes after that. He closed off one of the two doors. He rearranged the floor plan so that all the liquor was behind the counter, only food and beer in the self-service area up front. And he laid in some hardware. The night of the holdup, he says ruefully, "I had a pistol, far away. Now I got a couple close. Very close."

He reports this with a faint edge of surprise. "I don't want to live like that," he says. "I don't want to. But 24 years of my livelihood—my *life*—are in this store. I thought that in ten years I'd put it up for sale and retire. But as soon as people see this is a changing neighborhood, they won't touch this place. Or they don't want to give you anything for it—they know you want out. I'd have to take a tremendous loss if I sold it. But they'll push me out. Maybe six months, maybe a year. Another incident like this, I may close up tomorrow."

Or kill somebody: Joe Castelli can still see that pistol, still hear that loud *click*. Once, he spotted a Negro jamming a bottle into his trousers. Ordinarily he would have grabbed the bottle back—nothing more. But this time, in a sudden fury, he snatched up a bottle of Christian Brothers by the neck and in a flash was behind the thief, ready to bring the bottle crashing down on his head. He felt DeAngelo's fingers close around his wrist. "I wanted to kill him," he says now. "Fred

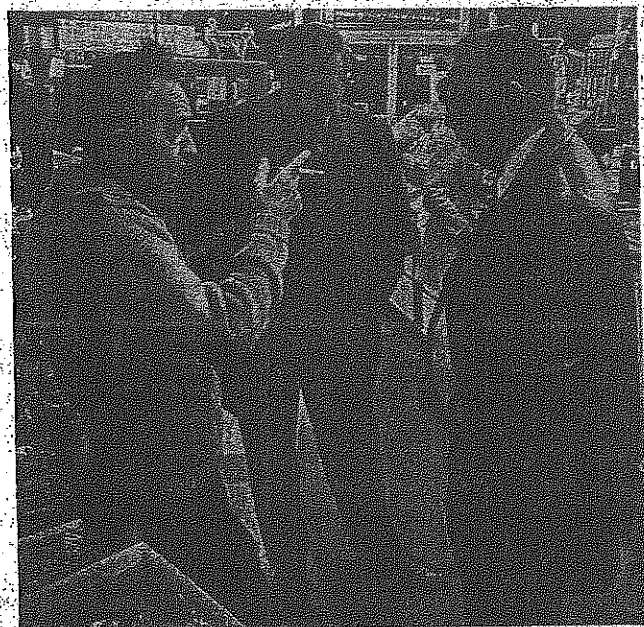
stopped me." Another day recently, a black in a fur coat came in and stood briefly with his back to the counter. "He was reaching into the coat—he had his hand in there and he was turning around. I had the gun out. If anything had flashed metal I would have shot him." Castelli paused. "You know what he had? A little puppy. He had a puppy in there." He sighed heavily, in wonder at what is becoming of him and his world. "A puppy," he said. "I would have shot him."

## THE COPS: 'It's Never Going to Stop'

The evening was clear and mellow for August, a cool 67 and breezy. Patrolman Joe Higgins nosed his unmarked squad car through the night places of the Gresham police district, watching the alleys and storefronts slide past, half-listening to the low staccato of the radio, exchanging shorthand grunts with his partner, Tom Cullen, slouched low in the seat beside him. They had been riding for three humdrum hours when, shortly after 9 p.m., they picked up the call; gunfire in the street up in the north reaches of the district. The two cops glanced at one another. Cullen got the mike out of the glove compartment and radioed: "Six-sixty going in." Higgins hit the accelerator and snaked through the sluggish night traffic toward Shop-Rite Liquors—and the middle of his own neighborhood.

It was a different place when Higgins was born 39 years ago—an all-white melting-pot mix of Irish, Italians, Germans, Swedes and Poles in brick bungalows and two-family houses and low-rise apartments. His father was a cop, a calling so common among the Gresham Irish that they called it simply "going on the job." Higgins never really thought of doing anything else; he came home from a Marine tour in Korea with a Silver Star and, in 1955, went on the job, too. And, just as comfortably, he settled in the old neighborhood, in the brick two-flat where he lives today with his wife, three kids and two dogs and his widowed mother upstairs.

Now, however, the neighborhood has tipped 60 per-



Cullen, Higgins (in coats) check out a case. The blue line

cent black, and with the change has come a wash of ethnic tensions and petty crime. In the old days, Higgins didn't have to worry unduly about his wife—"my bride"—working the midnight-to-7 shift as a registered nurse at Little Company of Mary Hospital. But he has caught three muggers within sight of his place, and now at 11:15 every night he pulls the unmarked police car into an alley across the street and sits there waiting in the dark until his bride is safely in the family Pontiac and off to her job.

Joe Higgins lives and patrols at that urban frontier where the dreams of the blacks and the memories of the whites collide, and it is a lonely and a painful place for a policeman. The big-city cop increasingly sees himself alone at the edge of a clearing, resented by poor Negroes, looked down on by affluent whites, menaced by revolutionaries, hog-tied by courts and politicians. The sense of alienation is doubly keen on the Chicago force, which has modernized and professionalized itself enormously over a decade—and which saw the resultant goodwill severely strained after the disturbances during the 1968 Democratic convention. Joe Higgins is an agreeable man with spiky blond hair and the beginnings of a second chin and a paunch, and he finds the

streets that August evening, he forgot about the shooting call and hit the brakes fast. Castelli blurted out the story and gave Higgins the license number of the black Ford. But it checked out to a fake address, a schoolyard—and Higgins and Cullen spent the next six hours cruising the dark, fighting drowsiness and looking

It was near first light when they spotted the car parked in a deserted industrial area with two Negro runaways, 13 and 17 years old, curled up asleep inside. The two patrolmen roused the boys out, searched the car—and found the blue-steel .25 under a jacket in the front seat. One of the boys, thoroughly scared, led them to a 17-year-old named James Hamilton\* who admitted having driven the car but not having gone into the store. Hamilton led them to his kid cousin, Frank, who admitted having gone into the store but not having handled the gun or clicked the trigger. And Frank Hamilton led them to Donald Payne.

And so, red-eyed and bone-weary, Higgins and Cullen, along with a district sergeant and two robbery detectives, went to the little green-and-white frame house in Roseland at 9 a.m. and rang the bell. Payne sister let them in and pointed the way upstairs.

Payne was sleeping when the cops crowded into his little attic bedroom, and he came awake cool and mean. "Get moving," someone said; "You're under arrest." The police started rummaging around while Payne, jawing all the while, pulled on a pair of green pants and a red jacket. "You don't have no warrant," he said. As Payne told it later, one of the cops replied, "We got a lawyer on our hands." But Higgins insists he misunderstood—"What I said was we'd get him a lawyer."

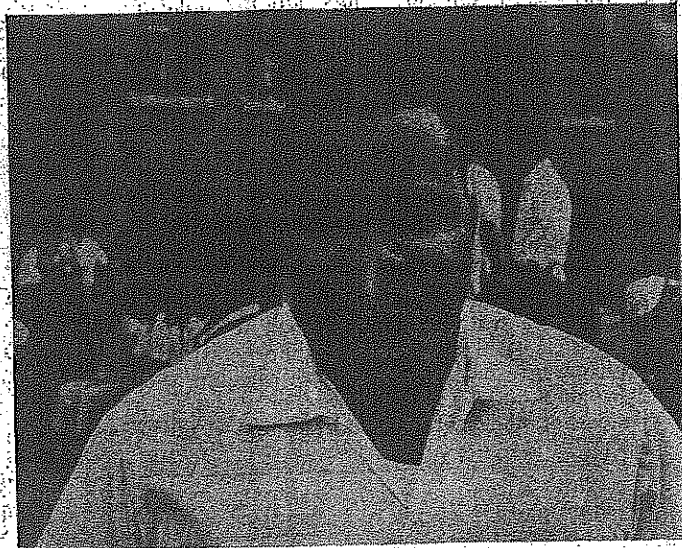
They marched him out in handcuffs past his mother took him to the district station and shackled him to a chair while one of the officers started tapping out an arrest report: "PAYNE DONALD M/N [for male Negro] 18 4-19-52 . . ." Higgins got Castelli on the phone. If Joe, he said, come in—we think we've got the man. Castelli came in with DeAngelo. The cops put Payne into a little back room with a few stray blacks. Castelli picked him out—and that, for the cops, was enough. Payne was taken to the South Side branch police headquarters to be booked, then led before a magistrate who set bond at \$10,000. The bounty is a paper figure; the Chicago courts require only 10 per cent cash. But Payne didn't have it, and by midafternoon he was on his way by police van to the Cook County Jail.

Joe Higgins and Tom Cullen by then had worked twelve hours overtime; in four hours more, Tac Unit 660 was due on patrol again. They talked a little about Donald Payne. "He had a head on him," Cullen said in some wonder. "Maybe if he didn't have a chip on his shoulder. Maybe—"

## THE JAIL: 'You'll Always Have The Hole'

He clambered down out of the van with the rest of the day's catch and was marched through a tunnel into the white-tiled basement receiving area. He was questioned, lectured, classified, stripped, showered, photographed, fingerprinted, X-rayed for TB, blood tested for VD and handed a mimeographed sheet of RULES OF THE COOK COUNTY JAIL. ("... You will not escape from this institution . . . You will be safe while you are in this institution . . .") He says he was marked down as a Blackstone Ranger over his objections—told them I was a little old to be gang-bangin'—and assigned to a teen-age tier, E-4. He was issued a wristband, an ID card and a celling ticket, led upstairs and

\*The names of "Hamilton" and his cousin have been changed, since both are juveniles.



Moore: 'You got in trouble because you wanted trouble'

present pass galling. Once, policing a peace demonstration, he asked a student dissident: "So what happens after you guys take over? You're going to have laws and you're going to have to have somebody to enforce them. So you're still going to need us." And the kid told him, "I never thought of that."

Higgins has plenty of time to think about it, riding the streets with Cullen as a plainclothes "Tac [for Tactical] Unit." The night world sliding past his squad-car windows is in one sense changeless: "There was crime before I came on the job, there is crime now and there will be crime after I'm gone. It's been going on since Cain and Abel, and I don't think it's ever going to stop." But crime in the Cresham district is changing. There is more of it. It is getting younger, and blacker, and brassier, and unaccountably more violent. "It used to be," says Higgins, "that if you caught a stick-up man and told him you were a police officer he'd put his hands up. Now they'll try to shoot you if they can."

And it is coming closer to home. Higgins lives just a few blocks from Shop-Rite; he has traded there for twenty years, and when he saw Joe Castelli waving in

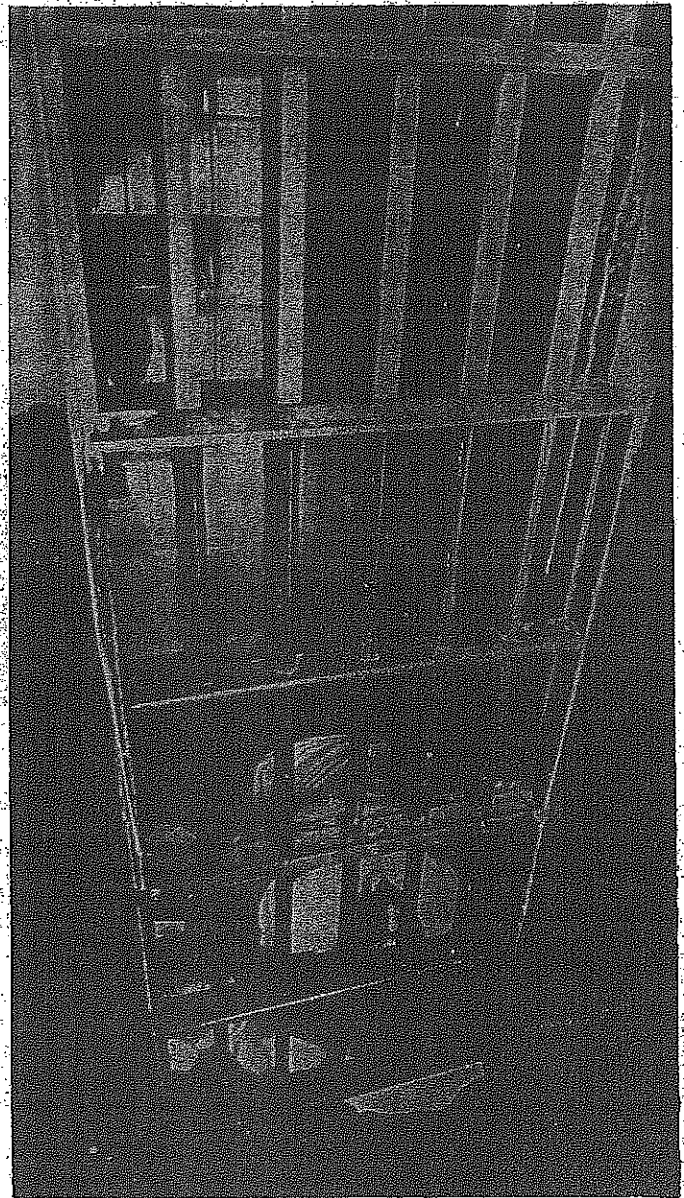
checked into a tiny 4-by-8 cell with an open toilet, a double bunk, two sheets, a blanket and a roommate. The door slammed shut, and Donald Payne—charged with but still presumed innocent of attempted robbery and attempted murder—began nearly four and a half months behind bars waiting for his trial.

Jails have long been the scandal of American justice; nobody even knew how many there were until a recent federal census counted them (there are 4,037)—and found many of their 160,000 inmates locked into what one official called "less than human conditions of overcrowding and filth." And few big-city jails have had histories more doleful than Cook County's. The chunky, gray fortress was thought rather a model of penology when Anton Cermak started it in 1927. But its first warden hanged himself, and its last but two, an amiable patronage princeling named Jack Johnson, was sacked when a series of investigations found the jail ridden with drugs, whisky and homosexual rape and run by inmate bully boys.

Johnson gave way to warden (and now director of corrections) Winston Moore, 41, a round black Buddha with wounded eyes, short-shaven hair, a master's and a start on a doctorate in psychology and some non-handed notions about managing jails and jail inmates. Moore's mostly black reform administration has tamed the inmate tier bosses, cleaned up the cells and the prisoners, repainted the place for the first time, hired more guards at better pay, started some pioneering work and work-training programs, opened an oil-painting studio in the basement room where the county electric chair used to be and begged free performances by B.B. King, Ramsey Lewis, Roberta Flack and even, minus the nude scene, the Chicago company of "Hair." But there has never been enough cash, and lately the John Howard Association, a citizens' watchdog group that gave Moore top marks for his first year, has turned on him with a series of reports charging a miscellany of cruelties within the walls. And worst of all is the desperate overcrowding. The rise in crime and the slowing processes of justice have flooded Moore's 1,300 claustrophobic cells with 2,000 prisoners, most of them doubled up at such close quarters that if one inmate wants to use the toilet, the other has to climb on the bunk to get him by.

Roughly 85 per cent of the inmates are Negro, and most, like Donald Payne, are stuck inside because they are too poor to make bail—not because they have been convicted of crimes. But the presumption of guilt in a jail, as it does so much of American justice, and Moore squanders little sympathy on his charges. He came up in black New Orleans, the son of a mailman struggling for decency, and when any of his inmates makes his troubles on hard times or bad conditions, Moore explodes: "Bulls—! Don't give me that—I was here too. I know what it's like and I made it. You got in trouble because you *wanted* to get in trouble."

The narrow eyes smolder. Moore confesses that he had one advantage a lot of street kids didn't: "I had a father who would go upside my head if I got out of line. I fought kids every day to go to school. I figured I had a better chance with them than I would have with my father if I didn't go." He looked at the street kids with occasional pangs of envy—"They had the girls, they had the clothes, they had the money, they had the talk"—but he never joined them. And so today he has small pity for the Donald Paynes and enormous scorn for those white liberals who seem more concerned with explaining them than with punishing them. It is there that he sees the real racism of the system—"these bleeding liberals who have so much guilt that they can justify blacks killing blacks because we're immature. They're the ones who want to *keep* you immature. Quit justify-



The Hole: "There is no other way to contain the blind rage"

ing why I kill my buddies on Saturday night and try to stop me from doing it."

Moore has no such tender feelings; he lays on rock concerts and painting classes but he also maintains The Hole—a tier of isolation cells into which the hard cases are thrown with no beds, no day-room privileges, no cigarettes, no candy bars, no visitors, nothing to do but lie or sit or squat on a blanket on the floor and wait for the days to go by. "You will always have to have a place like The Hole," Moore says without a hint of apology. "Much of the problem of crime is immaturity, and the greatest reflection of immaturity is rage—blind rage. There is no other way to contain it." The Hole nevertheless is a degrading place for people on both sides of the bars. The men crouch like caged animals, eyes glinting in the half light. The guards in The Hole wear white because the men throw food at them and white is easier to launder.

It took Donald Payne less than 24 hours to get there. He came onto tier E-4 angry at being put with the gang kids and shortly ran into a youth from his block



The tunnel: Stripping for a search before the day in court

who had been a member of the Gangsters. "He had me classified as a Gangster, too," Payne says. "He thought I was just scared to say so cause we were on a Blackstone tier. He ran up in my face and wanted to fight. We had a fight and I went to The Hole for 30 days and he got fifteen."

So they gave Payne a cage, and he sat it out. What do you do? "You sit on the toilet. You wait for the food to come around." What do you think about? "Gettin' out." How do you feel about The Hole leaving it? "It didn't matter much." Not enough, in any case, to keep him out: he went straight back in for four days for sass-ing a guard, emerged with a reputation as a trouble-maker with a "quick attitude" and later did 30 more when Moore's men put down a noisy Blackstone hunger strike on E-4. After that, Payne was transferred to a men's tier and did a bit better. "Those Rangers," he says, "they keep talkin' about killin' up people. What they did when they was outside. What they gonna do when they get out." The older men by contrast idled away their time in the dayroom playing chess and cards and dominoes. They taught Payne chess and let him sit in. "People over here been playin' five and six years," he says, grinning a little. "They're pretty good, too. But I don't wanta be *that* good."

All the while, his case inched through the courts. Illinois requires that the state bring an accused man to trial within 120 days or turn him loose—a deadline that eases the worst of the courthouse delays and the jailhouse jam-ups that afflict other cities. But the average wait in jail still drags out to six or seven months, occasionally because the state asks for more time (it can get one 60-day extension for good cause), more often because delay can be the best defense strategy in an overloaded system. Evidence goes stale; witnesses disappear or lose interest; cases pile up; prosecutors are tempted to bargain. "You could get twenty years on this thing," Constantine Xinos, the assistant public defender who drew Donald Payne, told him when they met. "Don't be in a hurry to go to trial."

Waiting naturally comes easier to a man out on bond than to one behind bars, but Payne sat and waited. On Aug. 24, nineteen days after his arrest, he went from The Hole down through the basement tunnel to the courthouse, stripped naked for a search, then dressed and was led upstairs for a hearing in Room 402—Violence Court. Room 402 is a dismal, soot-streaked place, its business an unending bleak procession of men charged with armed robbery, rape and murder, its scarred old pews crowded with cops, witnesses, wives, mothers and girl friends jumbled uncomfortably together. Payne waited in the lockup until a clerk bellowed his name, then stood before Judge John Hechinger in a ragged semicircle with his mother, the cops, the victims, an assistant state's attorney and an assistant public defender and listened to the prosecution briefly rehearse the facts of the case.

Frank Hamilton—Payne's alleged accomplice—by then had been turned over to the juvenile authorities, and Hechinger dismissed the case against James, the driver of the car, for want of evidence that he had had anything to do with the holdup. But he ordered Payne held for the grand jury. The day in court lasted, a matter of minutes; Payne was shuffled back through the lockup, the nude search, the basement tunnel and into The Hole again. On Sept. 18, word came over that the grand jury had indicted him for attempted armed robbery (gun) and attempted murder, and the case shortly thereafter was assigned to Circuit Judge Richard Fitzgerald for trial.

So Payne waited some more, and the rhythm and the regularity of the life inside crept into his blood. Connie Xinos, appalled by the surge in black crime, thinks it might help a little to put one of those tiny cell on display on a street corner in the middle of the ghetto as an object lesson. But, talking with Donald Payne, one begins to wonder about its power as a deterrent. Payne was irritated by the days he spent in court; nobody brings you lunch there. "I sort of got adjusted to jail life," he says. "It seem like home now."

## THE DEFENDER: 'It's The Wild West'

Connie Xinos disliked Donald Payne from the beginning. They met in October in the prisoners' lockup behind Judge Fitzgerald's courtroom, and all Xinos had to go on then was the police report and Payne's public defender questionnaire ("All I know is I was arrested for attempt murder on Aug. 5") and that insinuating half smile. *He did it*, Xinos thought; all of them except the scared children and the street-wise old pros swear they are innocent, but you get a feeling. And that smile. *He's cocky*, Xinos thought. *A bad kid*. Xinos has been in less than four years, but four years in the bullpens is long time. He thinks Chicago is dying. And he thinks thousands of black street kids much like Donald Payne—his clients—are doing the killing.

Xinos is 30, the son of a Greek cafeteria owner bred in the white Chicago suburbs, a stumpy young bachelor with quizzical eyes, a shock of straight, dark hair and a Marine Reserve pin glinting gold in the lapel of his three-piece suit. He came to the building a year out of John Marshall Law School, hoping for a job as an assistant state's attorney ("It seemed to be glamorous—don't get parking tickets and you carry a gun") but was hungry enough for steady pay and trial experience to settle for what he could get.

The state's attorney had no openings, so he went up stairs to see public defender Gerald Getty. "Don't even pay me," he said. "Give me a dollar a year. I just want to work." Getty asked him to get a letter from a Demo-



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...ratic committeeman for form's sake—practically every-  
...one in the building from janitor to judge has some such  
...connection—and hired him shortly afterward for \$7,800  
...year to start (and \$13,600 now). Xinos arrived bub-  
...pling with ideals, like most of the young lawyers coming  
...into the office, but a senior staffer on his way out took  
...him aside and told him: "Six months in those bullpens  
...and you'll want out. You'll go practice probate law."  
...And now Xinos figures he was right.

...deals die young in a public defender's office. Chi-  
...cago's is one of the oldest and best in the U.S.; it  
...was organized in 1930, three decades before the Su-  
...preme Court asserted the right of the poor to counsel in  
...any felony case, and its staff now numbers 68 mostly  
...young and energetic lawyers. But they remain enor-  
...mously overworked, partly because crime rates keep  
...rising, partly because all the defendants' rights an-  
...nounced by the High Court in the 1960s have vastly in-  
...creased and complicated their caseload. Xinos and his  
...colleagues, squeezed in four desks to a cubicle, handle  
...more than half of Cook County's yearly 3,700 criminal  
...cases; their clients are 70 per cent black and typically  
...too poor either to hire private lawyers or to make bail  
...pending trial. At any given time, says Xinos, "I got a  
...hundred guys sitting over there in County Jail wonder-  
...ing if Xinos is working on my case out there." And he  
...knows the most he will be able to do for 90 per cent of  
...them is "cop them out"—plead them guilty—"and look  
...for the best deal you can get."

...That they are all nominally innocent under the law is  
...little more than a technicality: public and private de-  
...fenders learn quickly to presume guilt in most cases and  
...work from there. "I tell 'em I don't have to presume in-  
...nocence," says one senior hand in the office. "That's a  
...legal principle, but it doesn't have to operate in a law-  
...yer's office." It stops operating when a rookie lawyer  
...discovers that practically all his clients come in insisting  
...that they didn't do it. "You can almost number the sto-  
...ries," says one of Xinos's colleagues, Ronald Himel. "I  
...walked into the alley to urinate and I found the TV set.  
...Somebody gave me the tires. Well, God forbid it  
...should be true and I don't believe you. My first case  
...out of law school, the guy told me he walked around  
...the corner and found the TV set. So I put that on [in  
...court]. The judge pushed his glasses down his nose,  
...munched up and said, 'Fifty-two years I have been  
...walking the streets and alleys of Chicago and I have  
...never, ever found a TV set.' Then he got me in his  
...hambers and said, 'Are you f---ing crazy?' I said, 'That's  
...what he told me.' The judge said, 'And you believed  
...that s---? You're goofier than he is!'"

...Xinos learned fast. "For a while," he recalls, "I used  
...to go out on Clark Street—in a crime-infested  
...section of storefronts and rooming houses north of the  
...Loop—and go up to these places and measure off rooms  
...for evidence. People looked at me like I was nuts." So  
...did judges, and after six months or so Xinos quit  
...measuring off rooms like Perry Mason and started op-  
...erating—"swinging"—inside the building.

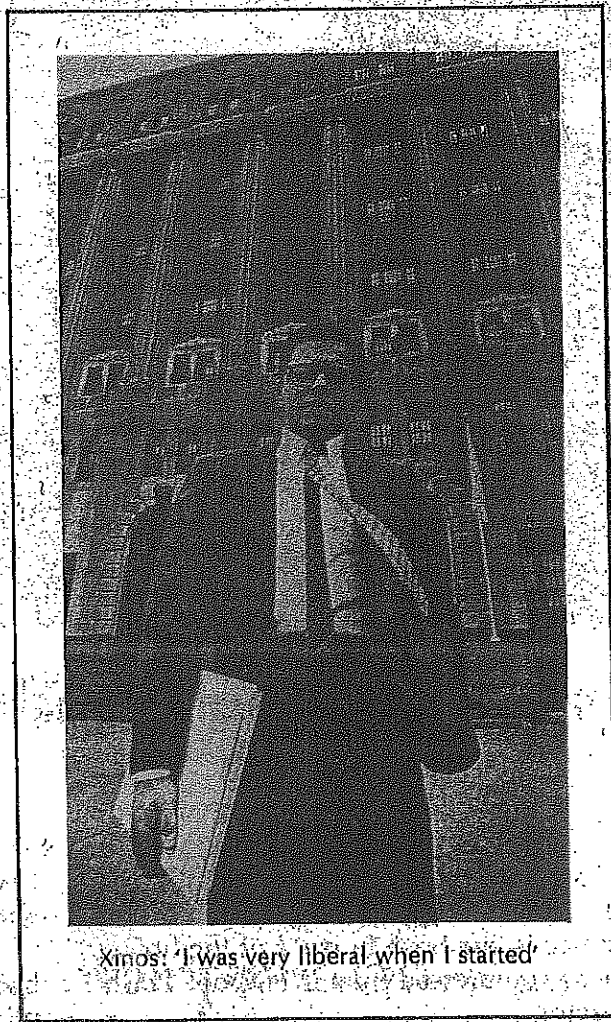
...You learn its folkways. "It's our court," Xinos says.  
..."It's like a family. Me, the prosecutors, the judges, we're  
...all friends. I drink with the prosecutors. I give the judge  
...a Christmas present, he gives me a Christmas present."  
...And you learn technique. The evidence game. The lit-  
...tle touches: "The defendant should smile a lot." The big  
...disparities: which judge gives eighteen months for a  
...wife-killing and which one gives twenty to 40 years.  
...How to make time and the caseload work for you. "The  
...last thing you want to do is rush to trial. You let the  
...case ride. Everybody gets friendly. A case is continued  
...ten or fifteen times, and nobody cares any more. The  
...victims don't care. Everybody just wants to get rid of the  
...case." Then you can plead your man guilty and deal for

reduced charges or probation or short time. You swing.

And you get calluses. You discover early that a lot of  
crime is black and that the bulk of it—black crime  
against black victims—is taken considerably less seri-  
ously than crime by anybody, black or white, against  
white victims. "There's one kind of law for them," a  
judge told Xinos early on, "and another kind for us." It  
was a hard lesson—"I was very liberal when I first start-  
ed"—but everything, even the working vocabulary of  
the building, confirmed it. You learn that a "nigger dis-  
orderly" means anything up to and including the mur-  
der of one black by another; you learn that a black man  
convicted of raping a black woman may well get off with  
the minimum sentence ("Four to five years and every-  
body's happy") but a "zebra rape"—black on white—  
means certain big time. And, since the bulk of the rape  
and murder cases you handle are black against black,  
you learn to swing with the double standard, too.

Only, if you are Xinos, you begin to wonder: you  
spend your days defending black youths you suspect  
are guilty of violent crimes and your nights thinking that  
violence is taking over the city. "When I was a kid,"  
says Xinos, "a guy would stick you up, take the money  
and run. Now they'll kill you. It's just wild. These f---  
kids will kill you." His fingers fidgeted at a note to him-  
self, Scotch-taped to his desk lamp. "Just like this god-  
dam Payne. They don't even wear masks. You think you  
could get a guy to wear a f---ing mask. A ski mask, at  
least. But no. They go into places where they've been  
drinking for years, they hold up guys they know out on  
the street. It's the Wild West."

So Xinos took an apartment in the distant suburbs;  
he carries a gun because he is afraid even to stop with  
a flat on the Eisenhower Expressway without one; he



Xinos: 'I was very liberal when I started'

talks like a cop about how the law isn't being enforced and how sentences are too light. "This city is dead," he says. "The Negroes are going to take over, and when they do, it's like the worst guy in the office getting to be boss—they're going to f--- over us for a while. I don't want to live in a city full of Negroes." So he is thinking of going into private practice with an old pal in Florida, and in the meantime he spends his days dealing for light sentences for defendants like Donald Payne. He does this partly out of what is left of his ideals ("They should have to prove every case, get the f---ing witnesses, put it on"), partly because that happens to be what he does. "We got probation for some kids who got on a bus and stuck the people up. *Probation*. It's just like Jesse James. Well, they didn't get on my bus, so f--- 'em."

And, like any commuter, he tries to leave it all at the office. The ones you can't are the few you plead guilty when you really believe they are innocent: "When you're scared of losing. When they've got a case and you believe your guy but you lose your faith in the jury system. You get scared, and he gets scared and you plead him." But the Donald Paynes—the great majority of his cases—are different. Xinos never liked Payne; Payne fought him, and Xinos much prefers the pros who tell you, "Hey, public defender, I killed the f---er, now get me off." Xinos thought Payne should plead guilty and go for short time. But Payne clung to Standard Alibi Number Umpty-one ("I was home at the time this was supposed to have broke out") and demanded a trial, so Xinos gave him the best shot he could. He had to lay aside his misgivings—his upset at crime in the streets and his suspicion that Payne was part of it. "Me letting ten or twenty guys out on the street isn't going to change that," he says. "This violence—it's like Niagara Falls. You can't stop it."

## THE TRIAL: 'Let's Get Rid of this Case'

Everybody kept trying to talk him out of his trial. "Plead guilty, jackass, you could get ten to twenty for this," Xinos whispered when they finally got to trial. *Ain't no need for that*, said Payne. "You really want a jury?" the assistant state's attorney Walter Parrish teased him. "Or you want to plead?" *I want my trial*, said Payne. Everything in the building says cop out, make a deal, take the short time. "They ought to carve it in stone over the door," an old courthouse hand, then a prosecutor and now a judge, told a friend once. "NO CASE EVER GOES TO TRIAL HERE." The People vs. Donald Payne did get to trial, halfway at least. But then his case went sour, and the deal got sweeter, and in the end Donald Payne copped out, too.

Practically everybody does: urban justice in America would quite simply collapse if even a major fraction of the suspects who now plead guilty should suddenly start demanding jury trials. The Payne case was only one of

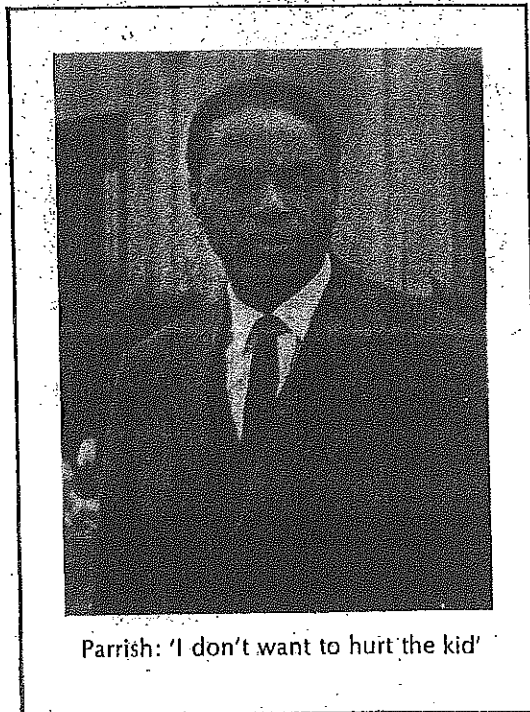
500 indictments on Judge Richard Fitzgerald's docket last year; it would have taken him four years to try them all. So 85 to 90 per cent of them ended in plea bargaining—that backstairs haggling process by which pleas guilty are bartered for reduced charges or shorter sentences or probation. "Elea bargaining used to be a narrow word," says Fitzgerald; only lately have the bar and the courts begun to call it out of the closet and recognize it as not just a reality but a necessity of the system. "We're becoming a little more sophisticated about it. We're saying 'You're doing it; we know you're doing it and you have to do it; this is the way it has to be done'."

The pressures to plead are sometimes cruel, the risk of going to trial high and well-advertised. There is, for waverers, the cautionary tale of one man who turned down one to three years on a deal—and got 20 to 30 as an object lesson when a jury convicted him. Still, Payne insisted, and Xinos painstakingly put a defense together. He opened with a pair of preliminary motions, one arguing that the pistol was inadmissible because the evidence tying it to Payne was hearsay, the other contending that the police should have offered Payne a lawyer at the line-up but didn't. The witness straggled in for a hearing on Dec. 1. Joe Castelli took the stand, and Patrolman Cullen, and, for a few monosyllabic moments, Payne himself. Had anyone advised him of his rights to a lawyer? "No." Or let him make phone call? "No." But another of the arresting officers, Robert Krueger, said that Payne had been told his rights—and such swearing contests almost always are decided in favor of the police. Everybody admired Xinos's energy and craftsmanship. Nevertheless, Fitzgerald denied both of the defense motions and docketed the case for trial on Dec. 14.

And so they all gathered that wintry Monday in Fitzgerald's sixth-floor courtroom, a great dim cave with marbled and oak-paneled walls, pitted linoleum floors and judge, jury, lawyers, defendant and gallery so widely separated that nobody could hear anything without microphones. Choosing a jury took two hours that day, two the next morning. Parrish, an angular, Ivy-cut Negro of 41, worked without a shopping list. "I know some lawyers say fat people are jolly and Germans are strict," he says, "but none of that's true in my experience. If you get twelve people who say they'll listen, you're all right."

But Xinos is a hunch player. He got two blacks on the jury and was particularly pleased with one of them, a light-skinned Urban League member who looked as if she might be sympathetic. And he deliberately let one hard hat sort on the panel. Xinos had a point to make about the pistol—you couldn't click it more than once without pulling back the slide to cock it—and the hard hat looked as if he knew guns.

That afternoon, slowly and methodically, Parrish began to put on his case. He opened with the victims, and Castelli laid the story on the record: "About ten after 9, the gentleman walked in . . . He had a small-caliber pistol . . . edged away . . . The other lad came up to me and he said 'Shoot him, shoot him, shoot him' . . . [The first youth pointed the gun at me and



Parrish: 'I don't want to hurt the kid'

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ired three times or four—at least I heard three clicks.”  
And the gunman—did Castelli see him in court?”

“Yes, I do, sir.”  
“And would you point him out, please?”  
Castelli gestured toward the single table shared by the prosecution and defense. “That,” he said, “is Donald Payne.”

But Xinos, in his opening argument, had promised to alibi Payne—his mother was prepared to testify for him—and now, on cross-examination, he picked skillfully at Parrish’s case. Playing to his hard hat on the jury, he asked Castelli whether the stick-up man had one or two hands on the gun. “Only one, sir,” said Castelli. “And was that trigger pulled in rapid succession—click-click-click?” Xinos pressed. “Yes, sir,” said Castelli, and Xinos had his point: it takes two hands to keep pulling the slide and clicking the trigger. Next came Patrolman Joe Higgins, who remembered, under Xinos’s pointed cross-examination, that Castelli had described the gunman as weighing 185 pounds—30 more than Payne carries on his spindly 6-foot-1 frame. Payne had nearly botched that point by wearing a billowy, cape-shaped jacket to court, but Xinos persuaded him to fold it up and sit on it so the jurors could see how bony he really was. The 30-pound misunderstanding undercut Castelli’s identification of Payne—and suddenly the People and their lawyer, Walter Parrish, were in trouble.

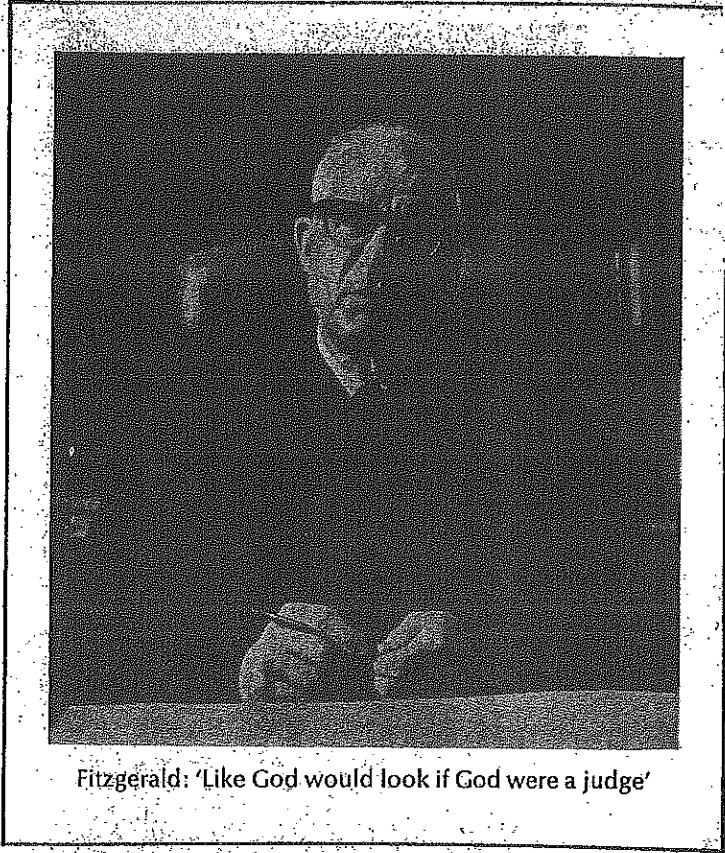
Parrish didn’t show it: he is a careful, phlegmatic man born to striving parents in the Chicago ghetto and bred to move smiling coolly through the system. He came into it with a Howard law diploma, a few years’ haphazard practice and the right sort of connections as counsel to and precinct captain for the 24th Ward regular Democratic organization. He figured on the job only as an apprenticeship for private practice, but he has stayed six years and seems rather comfortable where he is. The black kids over in the County Jail call him “The Devil,” and he likes that; he fancied that the edgy hostility he saw in Donald Payne’s eyes was a tribute to his hard-guy reputation. He likes his public-law firm, too. It pays him \$18,000—he guesses he would have to gross \$50,000 in private practice to match that—and it puts all the enormous resources of the state at his service. Investigators? The state’s attorney has 93 to the public defender’s six. Police, the sheriff, the FBI? “All you got to do is call them.” Pathology? Microanalysis? “Just pick up the phone. You’ve got everything at your beck and call.”

What he had in *People vs. Payne* was the Hamilton boys, the two cousins through whom the police had cracked Payne. Parrish had hoped he wouldn’t have to put them on the stand. “It was a risk,” he said later. “They could have hurt us. They could have got up there and suddenly said Donald wasn’t there.” But he was behind and knew it. He needed Frank Hamilton to place Payne inside the store, James to connect him with the car and the pistol. So, that afternoon, he ordered up subpoenas for the Hamiltons. “We know how to scramble,” said his young assistant, Joe Poduska. “That’s the name of the game.”

The subpoenas were being typed when Connie Xinos happened into the state’s attorney’s office to socialize—it’s like a family—and saw them in the typewriter. Xinos went cold. He had talked to the mother of one of the Hamiltons; he knew their testimony could hurt. So, next morning, he headed first thing for Parrish’s austere second-floor cubicle—and found the Hamiltons there. “We’re going to testify,” they told Xinos, “and we’re going to tell the truth.”

Xinos took Parrish aside. “Let’s get rid of this case,” he said.  
“It’s Christmas,” Parrish said amiably. “I’m a reasonable man.”

March 8, 1971



Fitzgerald: ‘Like God would look if God were a judge’

“What do you want?” Xinos asked.  
“I was thinking about three to eight.”  
“One to five,” said Xinos.  
“You got it.”  
It’s an absolute gift, Xinos thought, and he took it to Payne in the lock-up. “I can get you one to five,” he said. Payne said no. Xinos thought fast. It was a dead-bang case—the kind Clarence Darrow couldn’t pull out—and it was good for a big rattle, maybe ten to twenty years. Xinos went back downstairs, got the Hamiltons and sat them down with Payne in Fitzgerald’s library. “They rapped,” he remembers, “and one of them said, ‘Donald—you mean you told them you weren’t there?’ I told him again I could get him one to five. They said, ‘Maybe you ought to take it, Donald.’ I said, ‘You may get ten to twenty going on with the trial.’ And he said, ‘Well, even if I take the one to five, I’m not guilty.’ That’s when I knew he would go.”

But would Fitzgerald buy it? Xinos was worried. The judge is a handsome 57, with a pink Irish face rimmed with silver hair and creased to smile. “He looks like God would look and acts like God would act if God were a judge,” says Xinos. “He doesn’t take any s---.” He was a suburban lawyer in Calumet City when Mayor Richard Daley’s organization slated him for judge seven years ago, a reward for having backed a Daley man for governor once when it was tough to do so. He started in divorce court and hated it: “I think I’d rather have 150 lashes than go back down there. Jeez—it’s a lot easier to give a guy the chair than it is to take five kids away from a mother.” He is happier where he is, and he has made a considerable reputation in the building as a solid, early-rising, hard-working judge—no scholar but conscientious and good on the law. He can be stern as well; he isn’t the hanging type, but he does think the pendulum has swung pretty far lately in the defendant’s favor. “We’ve clothed ‘em in swaddling clothes,” he says, “and laid ‘em in a manger of bliss.” So Xinos fretted. “The judge is the judge,” he told Payne while they waited for an audience with Fitzgerald. “He



Stateville prison: In 1925, the circular glassed-in cell blocks were the last word in penitentiaries

might give you three to eight. You better think about it."

But Fitzgerald agreed to talk, and the ritual began to unfold. Xinos led Payne to the bench and announced for the record that they wanted to discuss pleading—"Is that correct, Donald?" Payne mumbled, "Correct," and, while he went back to the lockup to wait, the lawyers followed the judge into chambers. A bailiff closed the door behind them. Fitzgerald sat at his desk and pulled a 4-by-6 index card out of a box; he likes to keep his own notes. Parrish dropped into a deep, leathery sofa, his knees coming up almost to his chin. Xinos sat in a green guest chair in a row along the wall. There were no outsiders, not even a court stenographer. The conference, not the courtroom, has become the real locus of big-city criminal justice, but its business is transacted off the record for maximum flexibility.

Fitzgerald scanned Parrish's prep sheet, outlining the state case. Xinos told him glumly about the Hamiltons. "We look beat," he conceded.

"Walter," asked the judge, "what do you want?"

"I don't want to hurt the kid," Parrish said. "I talked to Connie, and we thought one to five."

They talked about Payne's record—his jobs, his family, his old gas-station burglary rap. "Two years probation," Xinos put in hopefully. "That's nothing," Fitzgerald pondered it all. He had no probation report—there isn't time or manpower enough to do them except in major cases—and no psychological work-up; sentencing in most American courts comes down to a matter of instinct. Fitzgerald's instincts told him one to five was a long enough time for Payne to serve—and a wide enough spread to encourage him to reform and get out early. "Up to five years," he feels, "that's the area of rehabilitation. Beyond five, I think they get saturated." So he made up his mind.

"Will he take it?" the judge asked Xinos.

"I'll go back and see," Xinos replied. He ducked out to the lockup and put the offer to Payne.

"Let's do it," Payne said. "Right now."

A light snow was falling when they brought him back into court, grinning slightly, walking his diddybop walk. A bailiff led him to a table below Fitzgerald's high bench. His mother slipped into place beside him. He

spread his fingers out on the tabletop and looked at them. The judge led him through the prescribed catechism establishing that he understood what he was doing and that no one had forced him to do it. Payne's "yeses" were barely audible in the cavernous room.

The choice now was his, Fitzgerald told him. He could go to the pen and cooperate and learn a trade and come out on parole in eleven months; or he could "go down there and do nothing at all and sit on your haunches . . . and you will probably be going [back] down there for twenty or 30 years." Payne brushed one hand across his eyes and studied the tabletop. "I'm giving you the first break you probably ever got in your life," the judge said. ". . . The rest of it, Donald, is up to you. Do you understand that?"

"Yes," said Payne.

And then it was over. Fitzgerald called the jurors in and dismissed them. They knew nothing of the events that had buried Donald; they sat there for a moment looking stunned. Xinos slipped back to the jury room to see them before they scattered. "But you were ahead," one told him.

Payne's mother walked out to a pay phone, eyes wet and flashing. "They just pressed Donnie," she insisted, "until he said he did it." Parrish packed up. "An hour, a day—even that's punishment," he said. "One to five is enough." Joe Higgins went back to Tac Unit 660. "Donald," he said, "is a very lucky man." Winston Moore heard about it in his office at the jail. "One to five?" he snorted. "S---. That's no sentence for armed robbery." Xinos went home to his apartment in the suburbs. "One to five," he said. "Fantastic. Payne *should* go to the penitentiary. He's a bad kid, he's better off there. He's dangerous. He'll be back."

And Payne was sulky sore. He shook hands with Xinos and grinned broadly when the deal went down but when Xinos told him later what that juror had said—*you were ahead*—he felt cheated. A break? "The best break they could have given me was letting me go. But there was nothing for him to do just then but go brooding back down to the tunnel and to jail. "Everybody do something wrong," he told himself. "Maybe my time just caught up with me."

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## PRISON AND BEYOND: 'I'm on My Way Home'

You can write to your lawyer, your preacher and six other people, the sergeant was saying, only remember—your letters are censured so watch what you say. No. 69656, born Donald Payne, sat half listening in the front row in his gray prison coveralls, his eyes idling over the chapel wall from the flag to the sunny poster—GOOD MORNING WORLD. Nothing controversial about prison in your letters, the sergeant was saying. "Let's keep this personal, fellas, your parents get a lot of this on TV." No sex either—"Let's keep this down to personal matters, fellas, we're not in a Sunday school class but let's keep our hands above the table." No doubletalk, no jive talk, no hep talk, no profanity. And fellas—don't risk your mail privileges by breaking the rules. "The more mail you get, the easier it will be for you," the sergeant was saying. "It gets depressing in here."

Payne had been marched aboard a black sheriff's bus by early light only a few days before and had been shipped with sixteen other County Jail inmates to Joliet prison, a 112-year-old yellow-stone fortress on the Des Plaines River 40 miles southwest of Chicago. The transfer, typically, was accidental: Payne was to have been held in jail until this month, when he is due in court on charges of having violated his old probation for burglary, but the papers got mixed up and he was bused out early. He didn't really mind, since by then he hated the jail so badly that even the pen seemed preferable. And so, on Feb. 5, he checked into Joliet's diagnostic center, drew his number and his baggy coveralls, was stripped, showered and shorn and began four to six weeks of testing to see which prison he would fit into best and what if anything it could do for him. Coveralls aren't much, but Payne, sharp, flipped the collar rakishly up in back and left the front unbuttoned halfway down his chest. Cool. Good morning, world.

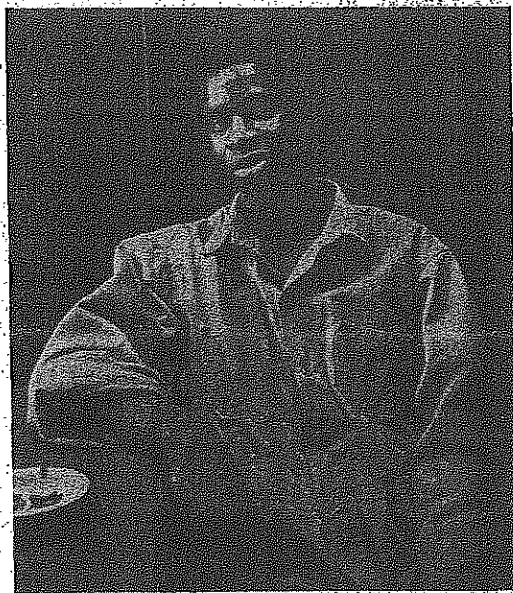
Except in this world, as the sergeant of the guard said, it gets depressing. Illinois's prisons, like most of America's, had fallen over the years into a sorry state of neglect until Richard B. Ogilvie made them a campaign issue at some hazard in his 1968 gubernatorial campaign and got elected. Ogilvie since has trusted the problem to a new director of corrections, Peter Bensinger, the 34-year-old heir to the Brunswick Corp. money and position, and Bensinger—an energetic beginner—has put Joliet and its neighbor, Stateville, under the management of reform-minded pros. The new team has begun upgrading the guard force, putting new emphasis on correction as against punishment and doing away with some of the pettiest dehumanizing practices; now, for example, they no longer shave a man's body hair off when he arrives, and prisoners are called to the visiting room by name, not by number. "We've taken everything else from the man," says Stateville's 33-year-old warden, John Twomey. "If we take his name, too, how can he feel he's a worthwhile human being?"

But money is short and reform painfully slow. "We've moved ahead about 50 years," says Joliet's black warden, Herbert Scott. "We're now up to about 1850." And 1850 dies hard. Donald Payne, a child of the city streets, is rousted from his bunk at 6 a.m., fed breakfast at 7, lunch at 10 and dinner at 3 and locked back in his cell before sundown. The language of the place confirms his devalued humanity: men are "tickets," meals are "feeds." The battery of IQ, personality and aptitude tests he is undergoing at Joliet are exhaustive but of uncertain value, since the prisons still lack programs enough to make use of what the tests tell them. So Payne is consigned to his bars and his bitterness. In Joliet at mealtime 900 men sit at long stone tables spooning food out of tin dishes and facing an enormous American flag—to instill patriotism," a young staff

psychologist explained wryly. A visitor asked how the men respond to this lesson. "I imagine," said the psychologist, "that they think, 'F--- the flag.'"

It is here that society has its last chance with the Donald Paynes—and here that the last chance is squandered at least as often as not. The lesson of People vs. Payne and countless cases like it is that the American "system" of justice is less a system than a patchwork of process and improvisation, of Sisyphean labor and protean inner motives. Payne was arrested on chance and the tenacity of two policemen; was jailed for want of money while better-off men charged with worse crimes went free on bail; was convicted out of court and sentenced in a few minutes bargaining among overworked men who knew hardly anything about him. It cannot be said that justice miscarried in People vs. Payne, since the evidence powerfully suggests his guilt and the result was a penalty in some relation, however uneven, to the offense. But neither was justice wholly served—not if the end of justice is more than the rough one-to-one balancing of punishments with crimes.

The punishment most commonly available is prison, and prisons in America have done far better at postponing crime than at preventing or deterring it. Joliet is a way station for Payne. He may wind up at Pontiac, where most younger offenders do their time; he would prefer the company of older men at Stateville, a vintage 1925 maximum-security prison with cells ranged in enormous glassed-in circles around a central guard tower. He says that in either event he will stick to his cell and go for early parole. "When I get out," he told his mother once in jail, "I'll be in church every day." Yet the odds do not necessarily favor this outcome: though the Illinois prisons have made progress toward cutting down on recidivism, a fifth to a third of their alumni get in trouble again before they have been out even a year. "Well," said Payne, smiling that half-smile at a visitor during his first days as No. 69656, "I'm startin' my time now and I'm on my way home." But his time will be a long and bleak one, and, unless luck and will and the last-chance processes of justice all work for him, Donald Payne may be home right now.



Payne in Joliet: 'I'll be in church every day'

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# TIME

FROM THE MAGAZINE

Monday, Oct. 13, 1980

## Between a Rock and a Hard Case

*Courts for repeat offenders dispense tough, swift justice*

The defendant, 33, stood accused of five rapes, with victims ranging from a teen-ager to a young mother walking with her children in Chicago's Lincoln Park to a 61-year-old woman. After a jury found him guilty of the one rape he was actually on trial for, Judge Robert Sklodowski pronounced him a "rape bomb, ready to explode at any time." Sklodowski handed down the maximum sentence: 60 years, 30 of which must be served before he can be paroled. Such stern penalties are rare from many judges, but they are standard procedure in three courtrooms on the fifth floor of a dingy gray stone building on Chicago's South Michigan Avenue. Its nickname: "the Rock."

With few exceptions, only the most hardened criminals end up at the Rock, which is more formally known as the Repeat Offender Team. To get there, a defendant generally must have been convicted of at least one felony and be charged either with a violent crime or with an offense, like armed robbery, where there is a threat of serious personal injury. There is never any shortage of candidates. Chief Criminal Judge Richard Fitzgerald, who oversees the program, estimates that 65% of the convicts in Illinois prisons are repeat offenders.

Robert Raymond, for example, is a convicted rapist who has spent most of the past 23 years behind bars. Last month he was at the Rock fighting rape and robbery charges and facing a possible sentence of as much as 74 years. Raymond, 45, knew the odds were against him: in 90% of the Rock's cases, the defendant either pleads guilty or is convicted, and prison sentences are dealt out 93% of the time. Says Judge Sylvester Close, one of Sklodowski's two colleagues at the Rock: "I'm no bleeding heart for any of these people who rob, rape or murder."

The Chicago program is one of a hundred or so set up across the U.S. in recent years in response to studies showing that a relatively few hard-core criminals are responsible for a disproportionate amount of crime. The first was New York City's major offense bureau (MOB) in The Bronx district attorney's office, which began in 1973. MOB'S success inspired the Law Enforcement Assistance Administration (LEAA) to invest \$30 million of

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federal money in 50 similar projects over a five-year period starting in 1975. Since then, 10,000 criminals who committed a total of 80,000 offenses have been sentenced under those projects to an average of 14 years in prison.

High conviction rates and long sentences are not the only features that set such programs apart; they are also swift. Cases in MOB move from arraignment to disposition in an average of 97 days, compared with around 400 days in the regular court system. One reason is the policy of assigning a prosecutor to each case for its duration instead of having it passed from one to another at various stages. Some programs, like Chicago's, act more quickly because the judges' case loads are lighter. Also important is their refusal to abide delays. Judge Thomas Fitzgerald, the third member of the Rock's troika, says he tries to limit continuances to 30 days, while judges elsewhere often allow 45 or 50 days.

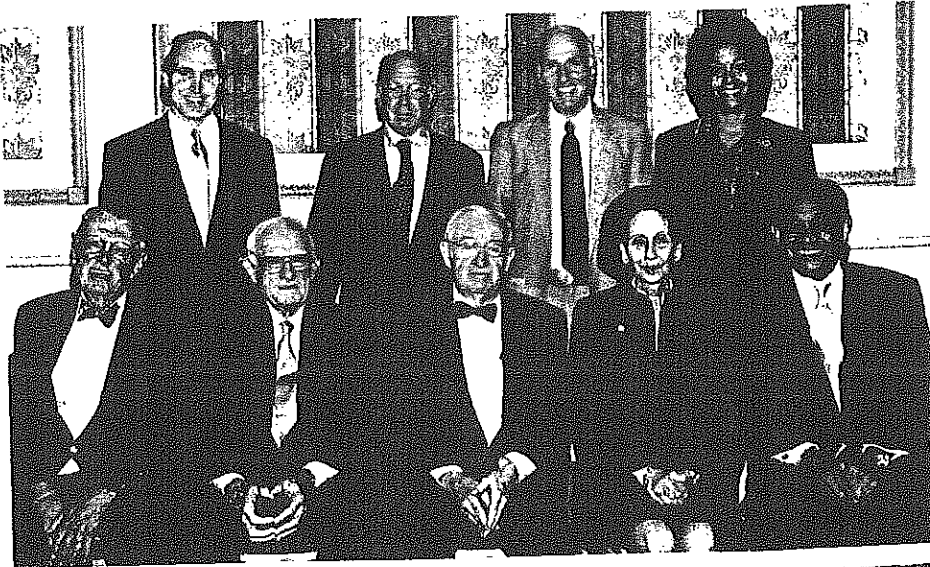
Naturally, many defense attorneys have misgivings about this brand of judicial hardball. "I still think part of the presumption of innocence is taken away," says Chicago Lawyer Jack Rodgon. "Every time I get a case at the Rock, I say to myself, 'Oh God, here I go again.'" Nevertheless, Rodgon concedes that some of the defendants deserve their harsh sentences and says he can "live with" the court. Others are more critical. John Ackerman, dean of the National College of Criminal Defense Lawyers and Public Defenders in Houston, charges that repeat-offender programs are "just trying to hammer a whole lot harder; they're just storing [the prisoners]. That's just postponing the date they commit another offense." To the boosters of such programs, that is precisely the point.

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# CBA NEWS

## Six Prominent Attorneys Receive "Justice Stevens Awards"



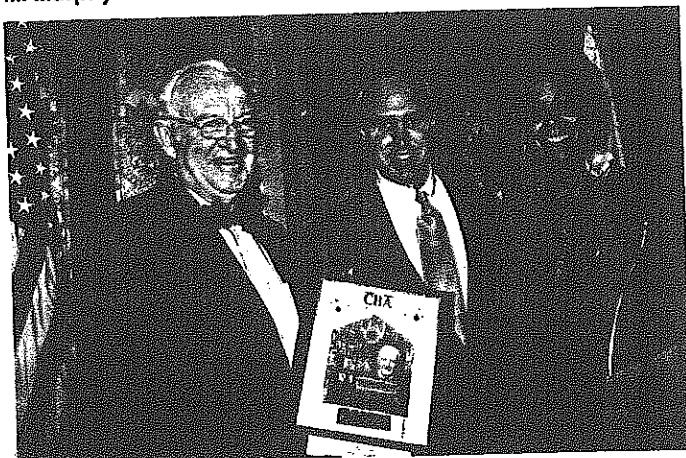
CBA President Terrence M. Burns (standing, left) and Chicago Bar Foundation President Eileen M. Letts (standing, right) joined U.S. Supreme Court Justice John Paul Stevens (seated, center) in honoring this year's winners of the annual "U.S. Supreme Court Justice John Paul Stevens Awards": (seated, from left) Hon. Prentice H. Marshall, Hon. Richard J. Fitzgerald, Dolores K. Hanna, and Earl L. Neal, and (standing) Robert A. Helman and Alexander Polikoff.



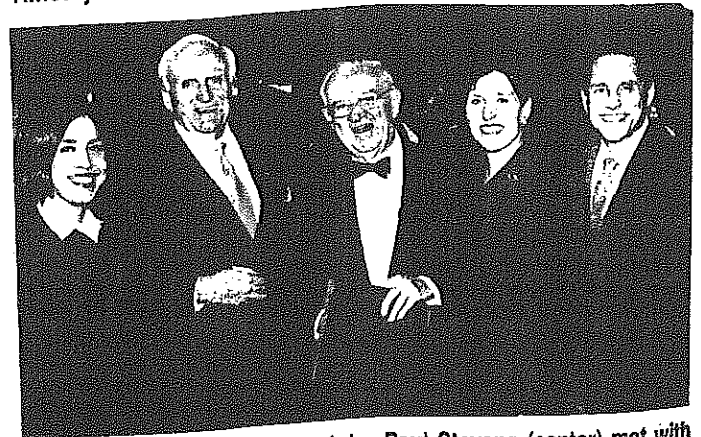
CBA President Terrence M. Burns welcomed CBA First Vice President Jennifer T. Nijman and CBA Executive Director Terrence M. Murphy to the event.



U.S. Supreme Court Justice John Paul Stevens greets Chief Judge Timothy C. Evans of the Circuit Court of Cook County.



CBA President Terrence M. Burns (center) and Chicago Bar Foundation President Eileen M. Letts presented a plaque of the cover of the September 2001 issue of the *CBA Record* to U.S. Supreme Court Justice John Paul Stevens. The publication's cover paid tribute to the second annual "Justice Stevens Awards."



U.S. Supreme Court Justice John Paul Stevens (center) met with several prominent attorneys from Chicago's legal community, including (from left) Karina Ayala-Bermejo, the Chicago Bar Foundation's Director of Community Services; Philip H. Corboy, Chicago Public Library Commissioner Mary A. Dempsey, who is a member of the CBA Board of Managers, and past CBA President John A. Simon.