JUSTICE DELAYED IS JUSTICE DENIED

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HOW TO DISPOSE OF FELONY CRIMINAL CASES ON AN AVERAGE OF 45 DAYS

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CONTENTS

Preface and Thanks

This system, which I am describing here, could not have been as successful as it was without the cooperation of the attorneys who practiced before me in the Criminal (Felony) Division of the Circuit Court of Rock Island County, Illinois.

The prosecutors who commonly appeared before me, included the Hon. Marshall Douglas, the State's Attorney, and Assistant States Attorneys, Dave Osbourne, Will Kalinak, Charles "Casey" Stengel, Kathleen Bailey and others.

The defense attorneys, most often, were the Public Defender, Mike Meersman and his assistants: David Hoffman, Jim Key, and Vince Lopez.

The prosecutors who "gravitated" to my call were the ones who wanted to try jury cases, and who wanted to learn to try them better. And they did.

Stengel and Meersman were later elected as Circuit Judges.

Others critical to my system, were Jeff O'Connor, our Chief Judge, and his Court Administrator, Vicki Bluedorn. Jeff installed me as Presiding Judge of Criminal, and backed me without reservation. Vicki Bluedorn, was always there to provide

the “additional judge,” when needed, to keep the system moving, and to type up the court’s “official schedule” from my handwritten schedule.

Also important, were the clerks assigned to “Criminal” — especially Teresa Ricke and Cindy, who always had the files we needed ready to go. Also important were the bailiffs who scrambled to make copies of my orders, and did the other “little things” to keep things moving: Effie Skafidas, Jim Gartelos, Ethel Sherlock and many others.

And, of course, also essential were the Sheriff and his deputies who executed my warrants, and conveyed prisoners to and from their cells so they would be present when needed, so as to avoid the delays that would have made my work impossible.

And finally, the official CSRs — the Certified Shorthand Reporters, with their stenotype machines — especially, Sherry Bolt, who was the CSR assigned to me. But I generated so much work that no one CSR could keep up with me. So, I am also grateful for all the help that I received from C.D., Michelle, Betty and all the rest.

Chapter 1

The Very Beginning — The Background

In September of 1966, I was appointed as an Assistant State's Attorney in Rock Island County, Illinois. In those days, the county's estimated population was about 167,000.

By 1990 - 2000, the decade when I was assigned to run the Criminal Division in Rock Island County, its population had dwindled to roughly 149,000. I was Presiding Judge of the Criminal Division for about 8.5 years of that decade. I took a "break" for about 18 months to set up the Matrimonial Division with Judge Clarence Darrow. 18 months in Matrimonial was enough. When I asked our Chief Judge, the Hon. Jeffrey O'Connor, to "put me back with my criminals," he did so immediately. I retired on January 4, 2000, a day after I finished my last jury trial.

While I was in "Criminal," I worked with Judge James "Jim" Teros. We alternated jury weeks. I wrote the Rules and drew up the two "Order" forms that we used in

the Criminal Division. Other than that, I ran my court, and Jim ran his. While I was Presiding Judge, I don't ever recall telling Judge Teros what to do. He just did it.

The way our (my) system worked was that Jim and I alternated *preliminary hearing weeks* and *jury trial weeks.* If the first week of the month was my jury trial week, it was Jim's *preliminary hearing week* (and non-jury week). If the second week was Jim's jury week, it was my *preliminary hearing week* (and non-jury week). And so on ….

If we needed a third judge to handle that "extra jury trial that we couldn't get to," we would ask Vicki in the Chief Judge's Office for "help." She was always able to "dig up" the extra judge that we needed to keep things moving.

Chapter 2

My Prior Experiences in the Rock Island County State's Attorney's Office

I began work in September 1966 as an Assistant State's Attorney in the Rock Island County State's Attorney's Office, after I was appointed by the then-State's Attorney, Richard Stengel.

In those days, The Circuit Court of Rock Island County had four divisional "traffic and misdemeanor courts." They were situated in Rock Island, Moline, E. Moline and Milan. They were staffed by "Magistrates" (who later became "Associate Circuit Judges"). I was immediately assigned to prosecute in the Magistrate Courts. But after serving about a two-month "internship" there, I "graduated" and began handling felony cases in the Circuit Court of Rock Island County.

In those days, at the end of 1966, the Circuit Court of Rock Island County had no Criminal Division, but the court did have four "Divisions:" Small Claims, Probate, County and General.

Felony Criminal Cases were heard by the Circuit Judges who were assigned, on a daily basis, to hear cases in the **General Division.** In those days, the judges "rotated." The idea was that every Circuit Judge was a Circuit Judge, and rotation would spread the work-load evenly. But because, Judge X, who might be assigned to the General Division on Monday, might be in Probate on Tuesday, and County on Wednesday, NO JUDGE had any ADMINISTRATIVE RESPONSIBILITY to see that Criminal Felony cases were expeditiously moved to completion.

The defense attorneys, of course, much preferred that their clients' cases would never come to trial. Therefore, with no judge nudging the cases forward, and an indifferent defense bar, the task of moving cases forward fell squarely upon the State's Attorney and his assistants. The problem with that, was that if the prosecutor didn't push the case, it sat.

That problem was exacerbated because many of the assistant prosecutors couldn't be induced to try a jury case at gun point. In the two-and-a-third years I was in the State's Attorneys' Office, of the attorneys in the office when I arrived, I can only recall the State's Attorney, two other assistants, and myself taking jury cases to jury trial. Like many other young prosecutors, I wasn't very good a first, but I was at least ready and willing to take cases before the juries. In my 28 months, as an assistant prosecutor, I tried 30 to 32 jury trials, if memory serves correctly.

An older attorney, Frank Wallace, greatly helped me. Before coming into the office, Frank had held a position with a private business, until one day he decided he wanted to re-enter the practice of law. We tried a couple felony cases together,

and he taught me some of the finer points of being a successful prosecutor, which I guess I became — since I lost only two of my felony jury trials.

But I refer to my days in the State's Attorney's Office to make a point. Besides having four or five assistants who took "zero" interest in trying felony jury cases, a good many felony cases seem to have gotten "lost in the shuffle." It was as if they had been assigned to nobody; or they had been put in an office drawer and forgotten, until one day, the case suddenly appeared on the court's schedule. Then, one of the other attorneys, or a secretary, would scramble into my office and say, "This case is on the schedule for 10:30 am. Can you cover it?"

That problem was exacerbated by the "120-day Rule." When a defendant was in custody, the case was subject to dismissal, if the defendant's trial did not commence within 120 days from the date of his incarceration. But it also mandated the same result, if the defendant, subsequent to being released on bond, made a "Demand for Speedy Trial." Such demands were often slipped, unlabeled as such, into a "Motion for Discovery," or a "Motion for a Bill of Particulars." More than one case went "down the drain" when the "Motion for a Speedy Trial" went unnoticed by a less-than-alert prosecutor.

Was it unethical to sneak a "Demand for Speedy Trial" into a motion labeled "Motion for Discovery." Of course. But the judge's answer was generally,

> "If you had read the motion rather than letting it sit on your desk, this wouldn't have happened. Motion granted. Case Dismissed"

Chapter 3

My Judgeship — December 1974 — January 2000

It is against this background, as an assistant prosecutor, that my ideas on how to move criminal cases *expeditiously* gradually began to take shape and form.

I spoke above, about "rotation" — how on a daily basis, the judges assigned to Rock Island County, bounced around between the divisions.

But that was only part of the story — part of the problem. Besides "rotating" *within* Rock Island County, we also "rotated" among each of the four counties that made up the 14th Judicial Circuit. Rock Island County, in terms of population, was clearly the largest county in Illinois' 14th Judicial Circuit. Then came Whiteside and Henry Counties, and finally, little Mercer County.

Whether the judge lived in Rock Island, Whiteside, Henry or Mercer, we all "rotated." We spent seven months a year in Rock Island County, two each in Whiteside and Henry, and one in Mercer. The assignment to Mercer was regarded as "rest and relaxation."

The theory behind "rotation" was that if the single judge elected in Mercer County held court only in Mercer County, he would have 12 months of "rest and relaxation" while the judges elected in the more populace counties, would "work like dogs," and do more than their fair share of "work." "Rotation" was devised to equalize the "work load" — so the judges in Mercer and Henry would not be playing golf or fishing, while the judges in Rock Island would be slaving in the "salt-mines."

But the problem was obvious. If "Judge X" was in Mercer today and gone at the end of the month, *the business of running the court,* and the *expeditious movement of cases* was left either to the next judge who followed him to Mercer County, or to the clerk, or to the attorneys. And if the attorneys did not like the next judge — a judge who might be inclined to move cases — they could, and did, schedule around him.

For civil cases, we had the "Strike List Rule." If a case sat inactive for 12 months, it was put on a "strike list," with notice to the attorneys, that if they didn't show cause for the removal of the case from the strike list, that it would be stricken or dismissed. At best, it was a "lazy-man's rule." It is hard to imagine why any case would be allowed to sit inactive for a year.

But the "strike list" was not used in criminal cases. So, a felony case could sit inactive forever! There is an old legal maxim: "Justice delayed is justice denied." I always felt it was a "maxim" that sounded great, but which was all too frequently ignored by bench and bar alike.

A second usage that militated against the judges dealing with cases on an expeditious basis, was the practice of allowing the attorneys to be in charge of the scheduling of their cases. If an attorney wanted to file a motion and have it heard, he called up the clerk and asked the clerk for time. If the attorney said the case would take an hour to hear, the clerk would dutifully set a hearing for an hour. If the attorney asked that it be set for an entire day, the clerk set it for an entire day. As long as the schedule book was open, the attorney could set the case for whenever it pleased him to do so. If the attorney wanted to have a trial on the case, the practice was the same.

One firm — let's call it the "Kaplotskie Firm" (a name I have made up to protect the "guilty") — would call the clerk and schedule a divorce case, such as *Schmidlapp v. Schmidlapp,* **for all day**.

Then on the morning that *Schmidlapp* was scheduled to go to trial, the firm would call the clerk and advise that *"Schmidlapp v. Schmidlapp* had been settled!"

They would then ask that two other non-contested divorces, which would take 10 minutes each, be set for 10 am and 10:10 A.M. These days came to be known as the "Kaplotskie Days!"

The “overworked” judges in the Rock Island County “salt-mines” loved the “Kaplotskie Days!” They could be on the golf course by 11 am! But nearly a full day of court time was wasted, and the judges were instead paid judicial salaries for playing golf, fishing, or mowing their yards.

I decided I wanted to be a Judge because my early impression of many of the judges was less than favorable. I felt I could do a better job. Indeed, I knew I could hardly do worse.

Early on, as a young prosecutor, I had a motion in a paternity case scheduled for 10 a.m. At the appointed, time I appeared before an older judge from Whiteside County. The hearing took five or less minutes. I won the motion. My case was the only case on “Judge Q’s” schedule that day. I asked him if he would wait around until I could hand-draft the order. He said, “Yes.” I hustled across the hall to the clerk’s office, and got a blank “Order” form. I filled it out within two minutes, and went back across the hall to “Judge Q’s” courtroom. The bailiff, who was the only one still in the courtroom, advised me, “He’s gone for the day; headed back to Sterling!” My thoughts— which weren’t pretty — went something like this: “The people of Illinois are paying this idiot $30,000 a year to drive from Sterling to Rock Island and back — 60 miles each way — to hold court for 5 minutes!” Then and there I decided, I would run for a judgeship down the road. I knew that I could and would do better.

I was elected to the Circuit Court bench in November of 1974, and a few days after I was sworn in on December 2, I was shipped off to Chicago, with the other newly-

elected judges to a "New Judges' Seminar," conducted by the Director of the Administrative Office of the Illinois Courts, the Honorable Roy O. Gulley.

Judge Gulley conducted at least one of the seminar's sessions. Four things that he told us have stuck with me for over 50 years:

1. A judge has *Administrative,* as well as *Judicial,* duties. Among them, is "moving cases expeditiously."
2. The judge is not a mere "umpire." The Judge is the "governors" of the trial. He cited an old appellate court case that instructed that the trial judge was to do more than sit on the bench "like an alabaster bust of his grandsire."
3. The judge had an affirmative, non-delegable duty, to see that "justice was done in the case."
4. A judge shouldn't make orders that he doesn't intend to enforce. When a judge routinely fails to enforce his orders, it breeds disrespect for the judge and the entire judicial process.

[One side note: I unsuccessfully searched for that "alabaster bust case" many times over the years in my spare moments. Once the appellate court decisions were put on computer, I finally found it — in two minutes!]

I took Judge Gulley's remarks to heart. They made sense to me.

Shortly after I became a judge, I began suggesting, at judges' meetings, that "rotation" should be consigned to the scrap-heap of Rock Island County history, and that each judge should be assigned to a designated division to hear, follow and move cases expeditiously.

For 16 years, my pleas fell on the deaf ears of my fellow judges. Then Judge Jeff O'Connor was elected as Chief Judge. Mine was the vote that made him "Chief." Immediately, everything changed. "Rotation" was abolished. Judges were assigned "permanently" to one of the three smaller counties, or to one of the newly created Divisions in Rock Island County. Of course, from time-to-time, a judge was reassigned to another division. So, "permanently" did not quite mean "forever."

I'd like to take credit for getting rid of "rotation," but I have always suspected that the Illinois Supreme Court's Administrative Office finally told Judge O'Connor, "Get rid of that 'idiotic rotation.' It's costing the taxpayers a fortune in mileage!"

With the demise of "rotation," I was assigned to run the Criminal Division in Rock Island County.