A Celebration *of* 35 Years *of* Judicial Service:

Collins Fitzpatrick's Interview of Judge John Grady

Introduction by Jeffrey Cole [*]

Oral history projects seek to preserve the lives of great men and women in a way that the cold pages of a biography cannot do. Perhaps the most famous of the legal oral histories are those by Dr. Harlan B. Phillips of Columbia's oral history research office. And of these, the most well known are those of Justices Frankfurter and Jackson. The recordings of Justice Jackson's interview span 74 hours recorded on 16.8 miles of reel-to-reel audio tape. *See* Noah Feldman, "Scorpions: The Battles and Triumphs of FDR's Great Supreme Court Justices," 415 (2010). A similar endeavor has been admirably undertaken by Collins Fitzpatrick, the Circuit Executive for the Seventh Circuit. *See* Collins Fitzpatrick, *The Judges of the Seventh Circuit: Oral Histories,* Circuit Rider 21 (November 2006). One of those interviewed is John Grady, who was appointed as a District Judge to the Northern District of Illinois in 1975 by President Ford and took his seat in January 1976.

But these are impersonal statistics that do not begin to tell the story of his contributions to the nation, and of the influences that shaped him. Even in the abridged version that follows, the story of Judge Grady's life is fascinating and shows that excellence and achievement are, in the end, the result of sustained effort, not of advantaged circumstances in the beginning. As Judge Grady explained to Collins, he has long been driven by a desire for public service. That was what motivated him initially to become a lawyer and then to accept Senator Percy's offer to be a federal judge. And it is that which has motivated him to continue to sit as a Senior Judge. In January 2011, Judge Grady began his 36th year of active service – a milestone exceeded by only one other District Judge in the 210-year history of the federal courts in Illinois, and by only seven others in the almost equally long history of all the districts in Wisconsin and Indiana.

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Q. Judge Grady, tell us a little about how the Gradys got to the Chicago area?

A. My father's side of the family is descended from Irish immigrants who came to this country shortly after the potato famine. My great-grandfather, Patrick Grady, was born in 1835 in County Limerick, Ireland and came to Illinois in the mid-1800s after marrying Jane Sullivan in Drumcolliher, a town in Limerick. They had five children. My grandfather, John, was born in 1865 and married Mary Ward in 1890. Her parents had been born in Ireland and had arrived in Illinois at about the same time as the Gradys. They were also blue-collar people. John Grady I and his wife Mary had three children, one of whom was my father, John F. Grady II, born in 1892 in Rock Falls, Whiteside County, Illinois. He died before I was two years old. His mother had also died when he was a young boy, and he had to work to help support the family. At some point he came to Chicago and went to work for Charles Walgreen, who came from Dixon, near Rock Falls, and who by that time had opened one or more drug stores in Chicago. My father attended the University of Illinois to become a pharmacist. He served in World War I and then went to work full-time for the Walgreen Company. He worked his way up and had an executive position by the time he met my mother, Lucille Schroder, whom he began courting through the mail. She had not yet graduated from high school in Springfield, Illinois. My mother was the first of her family ever to have attended high school, let alone graduated from high school. When she graduated, she came to Chicago and they were married shortly thereafter, in 1927. The marriage was a very happy one.

In 1928, my father fell ill with kidney disease. He died in 1931, leaving my mother a 22-year-old widow, with a two-year-old baby. In 1931, which was the depths of the Depression, my mother had to sell the house for a pittance. She worked as a cashier at Walgreen. We lived in an apartment on the South side and she walked to work to save car fare. She earned $12 a week. I remember her telling me that, and I think we had some Walgreen stock dividends which, together with her salary, is what we lived on. We lived in Chicago until I was about 8 or 9 years old and I attended a variety of parochial schools; St. Clara's, St. Philip Neri, and then at one point Our Lady of Lourdes on North Ashland. When I was about 6 or 7, my mother remarried. I have a half brother by that marriage who lives near Phoenix. He is eight years younger than I and is a retired school teacher. After the remarriage, which took place in about 1938, we lived in Chicago for a while and then in various places, including Arizona for a short time, when my stepfather was transferred there by his employer. We finally ended up down in Springfield, where both my mother and stepfather had been born and raised. By this time there was a little more money because the Depression was over.

CTF: Did you see the effects of the Depression?
JFG: I can't really say that I did. I know that my mother experienced it, but I can't say that I have any recollection of ever wanting for anything.

CTF: What about World War II?
JFG: I remember that quite well; but that again was nothing compared to what people in Europe and other places in the world went through. I remember the rationing, the shortages of various things, but there was no real hardship.I was too young to be in the war, which ended when I was 15, and in high school. I went to parochial grade school and high school in Springfield. I recall with affection my sixth grade teacher, Sister Catherine – a wonderful woman who lived to an incredibly old age. That school is still there. I attended my 50th graduation reunion in 1993. When it came time for high school, I thought I wanted to be a Jesuit. My mother was not Catholic, but she had reared me a Catholic out of respect for my father's memory, and had sent me to parochial schools.

CTF: What religion was she?
JFG: She had belonged to the Church of the Brethren. I always think with great affection about how my mother went out of her way to do this, because she'd go to one church and I'd go to another. She'd take me to church and then go to her own and come back and pick me up. I can remember my first communion; it was at St. Clara's in Chicago. I told my mom I needed a white suit. She said I must be wrong, and she went out and got me a black suit. So we arrived at the church about an hour in advance and there were 50 kids and only one in a dark suit. So she rushed me down to 63rd Street, found a store that was open and got me a white suit in time to come back and receive first communion in a white suit.

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Getting back to high school, my mother sent me for my freshman year to Campion, a Jesuit school in Prairie du Chien, Wisconsin. I didn't enjoy it. I found it rather rough going because I was a kid who liked to talk, liked to goof around, and that was not tolerated there. I was constantly in trouble, mostly for talking in study hall. I remember there were these priests and brothers there just waiting for me to do it – they knew I'd do it – it was just a question of when. It cured me of any desire to be a Jesuit, or anything else in a religious vocation. So I came back to Springfield after my first year at Campion and I said, "Mom, I don't want to go back there," and it was okay with her. So I then went to a Catholic boy's school in Springfield called Cathedral Boys High School – it's now called Sacred Heart – Griffin – and goofed around there for a couple of years playing basketball and neglecting my studies. At the end of three years of high school, I had about two years' worth of credits. So a priest there, who later became a dear friend of mine, said to my mother, "You've got to get this kid out of here. He's not doing anything and he's not going to get into college." So my mother investigated. I don't know how she found out about Lake Forest Academy. At about this time she and my stepfather got divorced and there was no reason to remain in Springfield if I was going to attend Lake Forest Academy. So my mother, my brother and I came up here to the Chicago area and I went to Lake Forest Academy and lived at home in Evanston. We lived in Evanston and I graduated from the Academy. By that time I had become a student – some sort of transformation had taken place. I'd gone from a happy-go-lucky kid who never did any homework to a good student.

CTF: Did you play sports in high school?
JFG: Yes. Basketball. Basketball was the only thing I was ever any good at. I was a substitute center on a team that went to the Sweet Sixteen from Cathedral in 1946 and we got soundly beaten in our first game by a team that I think went on to take second place.

CTF: What about activities?
JFG: Yes, the school newspaper, student council, debating. I was on the debate team at Northwestern.

CTF: Were you active politically?
JFG: No, I was not. I majored in political science at Northwestern. I was interested and thought that some day I would go into politics, but I never did.

CTF: Now, you went to a six-year combined law school/college?
JFG: Right, what I did was I took extra credit hours, and at the end of three years of college I was only one quarter short of graduating. So, by that time I knew I wanted to go to law school. I had read *Clarence Darrow for the Defense,* by Irving Stone, who also wrote *The Agony and the Ecstasy.* I was so enthralled by the story of Clarence Darrow that I decided that's what I wanted to do and, specifically, I wanted to become a criminal defense lawyer. I had never known any lawyers. There were none in my family. It was this one book and after I read it at about age 15 or 16, I knew that's what I wanted to do. I never had any ideas of doing anything else so when I went to college it was strictly to prepare myself to go to law school. The reason I went to Northwestern Law School is that it had a program where I could go in right after three years of college. Toward the end of my second year of law school, I went out and talked to the then Public Defender of Cook County, Francis McCurrie, and told him I would like to be a Cook County assistant public defender. He said that I should check back with him when I was nearing graduation. He was very friendly and I left his office thinking that I had, if not a promise of a job, at least a good chance of getting a job. A year later, as I was about to graduate, I went out again and saw Mr. McCurrie and it was pretty clear that he had no recollection of our meeting a year earlier. When I told him I was hoping to sign on as an assistant public defender he said, "John, I don't know where you got the idea that there is a place for you here." He said, "I have five assistants." That shows you how long ago that was, I think there are hundreds now. "Two of them are sons of judges and the other three are sons of county commissioners." Of course, there were no daughters in those days. He said, "This is a place where you need very strong political influence to get a job," and asked if I had any. I said, "No" and no truer word was ever spoken. So that was the end of my public defender career. He said there could be an opening in the future, but if there were, I would need some political backing to get the job.

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So I thanked him and went on my way – utterly crushed – devastated would not be an exaggeration. Here was the one thing in the world that I wanted to do and I had thought I had a good chance of doing it, and suddenly it disappeared. I didn't know any criminal defense lawyers I could work for; that was my next thought. I sent out some letters to firms and had a few interviews and had a few offers, but the kind of work they were offering was not the work I wanted. I remember one firm offered me a job where for the first couple of years I would be doing nothing but working on one railroad rate case. I had an offer from a very fine plaintiffs' personal injury lawyer, but I didn't think I wanted to limit myself to personal injury work. I ran into a fellow who had graduated a couple of years ahead of me on the street one day as I was literally pounding the pavement. He was an associate at the Sonnenschein firm and he said, "Why don't you come on over and talk to the people at my firm?" I did that and was impressed with them and accepted their offer of a job. And I became an associate at the firm that was then known as Sonnenschein, Berkson, Lautmann, Levinson and Morse. This was in 1954. I took the bar exam in August and was admitted to the Illinois bar in January 1955.

CTF: What about the Korean War? Did that affect you?
JFG: At that time I was the right age for the Korean War. I had asthma but I assumed I would be drafted. However, I flunked the physical and they sent me home, 4F because of asthma. I worked for about 15 months at the Sonnenschein firm, doing mostly legal research and writing memoranda in civil cases. They were very good to me. During the 15 months I was there I think I tried three civil bench trials. Also, I joined the Defense of Prisoners Committee at the Chicago Bar Association and tried two armed robbery jury cases as a court-appointed lawyer. Prentice Marshall was also a member of that committee. So after a relatively short period in practice, I had tried five cases and that was many more than anyone in the firm had tried during the same period. I think the three cases they gave me to try were because I made it very clear that it was what I wanted to do. My mother was, by that time, the personal secretary to the United States Attorney, Robert Tieken. She had worked for Tieken when he was a partner at Winston & Strawn. He got word that he was being nominated as U.S. Attorney by Senator Dirksen, and he asked her whether she would be interested in going with him as his secretary. We were living in Evanston at the time, and I was attending law school. She took the job, and I thought that applying to the U.S. Attorneys office would allow me to gain the kind of trial experience I so wanted. At that time, Frank McGarr was Tieken's first assistant. I knew Frank from having worked one summer as a clerk in the U.S. Attorney's office doing research. My recollection is that Paul Plunkett also worked there that same summer. Both, of course, became judges on our court. Jim Parsons and Bill Hart were also hired by Tieken and they later became judges on this Court. Ultimately, I got an offer to become an Assistant U.S. Attorney at a starting salary of $6,000.00 a year, which was a substantial raise from what I was making at Sonnenschein. I started in February of 1956, and stayed until February of 1961.

CTF: In those days was it generally helpful to have a sponsor?"
JFG: I can't say that it wasn't helpful, but I can say it wasn't necessary. I didn't have any political sponsorship. On the other hand, I had worked there before and my mother was very well regarded as a secretary. There were people working there who probably had political ties. A number of assistants who were there were Democratic holdovers from previous administrations.

CTF: Tell me about your five years in the U.S. Attorneys office.
JFG: It was what made my career. I became a seasoned trial lawyer. I was up against top-notch competition. I had many trials before every judge on the federal bench in Chicago. Many were jury trials and during the five years I was an AUSA I got more trial experience than I could have gotten in a lifetime anywhere else. And I really owe whatever success I had in my career following those days to that experience and the opportunity it gave me. I think the quality of the experience was enhanced somewhat by the fact that, in those days, we tried our cases alone, with rare exceptions. I made all of the decisions myself, for better or worse, without having to consult with anybody. The current practice of having two prosecutors for every trial was unknown in those days. We only had twelve Assistants in the Criminal Division, so that one lawyer per trial was a necessity if we were to keep up with the work.

During my tenure there, I became a member of the Illinois Pattern Jury Instructions Committee (Civil) which had been appointed by the Illinois Supreme Court. We worked from scratch and came up with a set of pattern jury instructions which are still used to this day in the state with very few material revisions from our original set. That was a very invigorating experience for me because it brought me into contact with leaders of the State Bar.

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The committee consisted of about twenty judges, law professors and lawyers from plaintiffs' and defendants' bars, and they were from all over the state. The chairman of the committee was a fellow named Gerald Snyder from Waukegan. He was president of the Illinois State Bar Association in or around 1959. He had a law firm up in Waukegan that was the leading firm in Lake County. They had a broad litigation practice with a lot of insurance defense work. His principal trial lawyer had a heart attack at about the time I was starting to wonder how long I would stay in the U.S. Attorney's Office. I didn't think I wanted to stay there the rest of my life. And if I didn't, then what would I do? Well, that decision was accelerated by an offer from Jerry Snyder to come up and take the place of his trial man who had the heart attack. So I decided I would take the job and that's what I did. I moved lock, stock and barrel to Waukegan in February of 1961 and became a civil trial lawyer. I began trying cases there at the same rate as in the U.S. Attorney's Office.

CTF: Did you try many cases in federal court after your move?
JFG: No, none. I had the hope that somebody might hire me to do federal work but it never happened. With one exception, my work was exclusively state civil trial work. Largely insurance defense, although a broad variety of stuff. I tried eminent domain cases, breach of contract; you name it. Practically everything. I stayed with Jerry Snyder for two years. When I went with him I told him, "I don't think I'll stay for long. My ultimate ambition is to have my own firm. I want to be my own boss." And he said, "Well, you'll change your mind about that" but I didn't. After two years I said, "I'm going to take off." This was 1963. We parted on good terms and I opened my own tiny office. I was a subtenant of a subtenant. I'm not even sure the law recognizes that status but that's what I was. I had low rent. I shared a secretary and I'm happy to say that because I'd become well known in Lake County as a trial lawyer, I immediately started getting business by referral from other lawyers, and I even got a few insurance company clients. I didn't solicit any business. It just came. I continued to practice as a sole practitioner until I was appointed to the bench and took office in 1976, so I spent fifteen years in Waukegan; thirteen of them as a sole practitioner. In addition to maintaining a law practice there, I became very active in Illinois State Bar Association lawyer grievance committee work. I got involved in that in about 1962 and eventually became General Chairman of the State Lawyer Disciplinary Committee, which acted as Commissioners of the Illinois Supreme Court and handled all grievance matters in the state arising outside of Cook County. When the Court decided to establish a full-time commission with a paid staff to replace the Bar Association volunteers, I participated in drafting the rules for the new organization, known as the Attorney Registration and Disciplinary Commission (ARDC). I was appointed as one of the five charter members of the Commission and served from its inception until I came to the district court in 1976.

CTF: Where did you meet your wife, Pat?
JFG: I met her on a blind date arranged by a client. I'd been hired by the client's Chicago lawyer to represent her in her Lake County divorce. It was a very hotly contested divorce. In fact, we tried it. I tried a number of divorce cases, including a couple of jury trials. These were the days when you had to have grounds for divorce and grounds could be contested. Divorce wasn't my speciality by any means, and I always said, "This is the last one," but somehow there was always a friend or somebody who needed a lawyer in a divorce case. But anyway, my client asked me one time whether I would like to meet a very nice young lady she worked with. My client was a psychiatric social worker at one of the state hospitals and Pat was a speech pathologist working with disturbed children there. So we had a double date. It didn't take with Pat and me immediately. I'd call every six weeks or so and we always had a good time. A big problem was that she lived in River Grove and I lived in Waukegan; a long way. Eventually, though, I realized that she was the one for me. We met in 1967, and got married in 1968. I continued my trial practice in Lake and McHenry Counties. Frankly I was starting to wonder, "Is this all there is?" Because I had done about everything there was to do in court, civil and criminal, there was a certain "sameness" that was starting to settle in. One personal injury case is not that much different from another, although sometimes the legal issues can be surprisingly fascinating. All of a sudden, one day I was sitting in my office in Waukegan and the telephone rang. The person on the other end of the phone introduced herself as Sheli Rosenberg, the then President of the Chicago Council of Lawyers. She said "Mr. Grady, my name is Sheli Rosenberg. I'm President of the Chicago Council of Lawyers. You may know that we are an organization that is very interested in improving the federal district court and in finding qualified candidates for the court." And I thought "Well, my friend 'blank' has aroused some interest." I assumed that she was calling me about a friend of mine who was a judge on the Circuit Court of Lake County and who longed to be federal district judge.

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But her next sentence was, "We have heard from many sources that you would make an excellent candidate for the federal district court." And I can remember my exact response. I said, "You have to be kidding me. I don't have any political connection for that job." And she said, "Believe it or not, that's not necessary." Now this was in 1974 in the wake of the Watergate scandal. There was a sort of "new" feeling in the land. Senator [Charles] Percy was the person who was selecting the candidates and she said, "You don't need sponsorship. Senator Percy is interested in appointing qualified people regardless of their politics." She asked, "Would you be willing to prepare for us a list of – I forget how many cases she said – I think she said a list of the last fifteen cases you have tried, in which you have been lead counsel. Give us the name of the case, what it was about, the name of the judge and opposing counsel and then give us some names of some additional lawyers we might talk to?" I said I really didn't think it would be worth the time to prepare such a list; that I appreciated her interest and was flattered by this call, but I just couldn't see this going anywhere. She said, "Well, won't you please just do it? Will you please trust me that I know what I'm talking about? We really believe that the lack of political sponsorship will make no difference." So, more because I just kind of liked the sound of her voice than anything else, I said, "Okay, I'll do it." So I agreed to prepare the list, and added, "By the way, I'm lead counsel in everything I do – I don't have any partners or associates." I sent her the list, and then tried to make myself forget about it, although to be honest I was kind of excited about just being considered, let alone the possibility that this could come to anything.

All of a sudden, I started getting phone calls from lawyers in Lake County asking, "John, what's going on here? I got a call from some guy who kept me on the phone for an hour about you!" I learned that the Chicago Council of Lawyers really does a job. They don't just take a quick look at a candidate. They were really cross-examining people about me. What happened was that they prepared a lengthy, detailed report for Senator Percy. I never saw it of course, and I didn't receive any further calls from anybody at the Chicago Council of Lawyers. One day the phone rang again and a fellow by the name of Jerry McMann introduced himself to me as Senator Percy's Administrative Assistant. He asked, "Mr. Grady, would you be willing to come down to Chicago to talk with Senator Percy about the possibility of an appointment to the federal district court?" I said, "I sure would." He said, "Can you come down, let's say Thursday at two o'clock." I said, "Yes, I can." So at two o'clock on Wednesday, the phone rings: "Mr. Grady, this is Jerry McMann, how come you're not down here?" I said, "The appointment is tomorrow." He said, "Oh no, the appointment is today." Well, I wasn't going to argue with him, but I knew just as sure as I was sitting there that I was right and he was wrong. I said, "I'm terribly sorry, there's no way I can get down there at a reasonable time today." I was an hour plus away. He said, "Well, let me get back to you." He called back in a few minutes and asked me to come down on Friday and that's what I did.

But I said to my secretary, "Well, I blew that one. It wasn't my fault, but there's no way they'll ever think it wasn't and why in the world would they appoint somebody who can't even keep the days straight? I'll go, but it's all over, any prospect of it; forget it." She said, "No, I'm going to pray on this." She was a born-again Christian. She said, "God wants it" and I'm sure she prayed on it. So I went down on Friday, and had the nicest chat with Senator Percy. He could not have been more gracious. I started out by saying I was awfully sorry about the mix-up and he said it was no problem at all. We chatted for perhaps an hour. He asked me all sorts of questions that I never expected, like what books I was reading, what I thought about preventive detention, and it was really fun. He said, "Well, I'll be in touch." The interview had seemed to me to have gone so well that when I left his office I was actually optimistic. Some time passed and I was in my kitchen in Waukegan at about 5:30 one morning, getting ready to drive down to Springfield to argue a case before the Illinois Supreme Court. I was just ready to walk out the door and the phone rang and a familiar voice said, "John, this is Senator Percy." I said, "Good morning, Senator." He said, "John, I do not have good news for you. I'm selecting two other lawyers for the two openings – Al Kirkland and Joel Flaum." I said, "Those are two fine candidates, Senator." I didn't know Joel, but I knew Al. He said, "Well, that's nice of you to say." Then he said, "Let me ask you this. Would you be interested if another opening comes up?" I said that I would but at that point I resolved not to give it too much thought.

Then, in December of 1974, Judge [Edwin] Robson announced he was going to take senior status. The newspapers carried articles about all of the prominent lawyers who were being considered for the vacancy. My name was not among them. Then one day the phone rang again. It was McMann again. Could I come down? Same thing. I go down again and it was as though we hadn't had the first conversation.

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The Senator did not ask me the same things he had asked the first time, but I had the feeling I hadn't made too much of an impression the first time because he didn't seem to remember me. He said, "Well, I'll be in touch." About three days later I got a call from him. He said, "John, I'm sending your name to the President of the United States to fill the vacancy on the United States District Court." and that's how it was.

The reason I wanted to go into some detail about this story and how it happened is that it is an unusual story – not unusual for Senator Percy – but unusual for the appointment process because he was at that time the only one who did it this way. He relied on people who were, in his opinion, knowledgeable about the qualifications of people and he also relied on his own gut feeling gained from the interview...Senator Percy really took a chance in reaching out for a political nonentity from Waukegan, Illinois.

CTF: You were not the only political nonentity that made it here.
JFG: I'm sure that's true.
JFG: Senator Percy told me in one of the interviews that the most important thing he did as a United States Senator was to nominate federal judges. So anyway, I closed up my law office as soon as I could which required an enormous flurry of activity in closing cases or finding other lawyers to carry on for my clients. Jim Parsons was the Chief Judge at that time and I let him persuade me that there was a great need for me to come down here as soon as possible, that they were in dire straits and, of course, that was nonsense. I practically killed myself getting down here in a few months which was not sensible. I should have taken six months. In any case, I came on board in January 1976.

CTF: Can you tell us about some of the significant cases you prosecuted?
JFG: The most important one involved Nathan Shavin, a personal injury lawyer who was a notorious ambulance chaser and had a habit of sending phony medical bills through the mail to insurance companies to increase the settlement value of the case. He would make what purported to be a copy of the doctor's bill on his own paper and he would inflate the bill. If it was $100, he'd make it $300. His way of negotiating was three times specials. Since the mails had been used to send the phony bills, Shavin was indicted for mail fraud. I tried the case before Julius Hoffman. I was unwise enough to accept a Chicago policeman's wife on the jury. It was eleven - one for guilty. We later learned that throughout the deliberations the policeman's wife was making arguments for the defendant that could only have come from outside sources. Shavin had a lot of police connections and I always believed the juror had been bribed.

CTF: Was it retried?
JFG: Yes. I tried it a second time and got a conviction on some but not all counts. The jury deliberations were lengthy. In interviewing the jurors, I found out that the reason for that was that one juror, who had a sickly son, told the others "I made a pact with God that, if my son recovered, I was never going to be unkind to anybody again. I'll find the defendant guilty on some things, but not on everything. You can pick three counts and I'll go along with it, but I'm not going to find him guilty on everything." The case was reversed on appeal on the basis that Judge Hoffman kept out of evidence, at my request, the fact that Shavin had not submitted phony bills on some occasions. [*United States v. Shavin,* 287 F.2d 647 (7th Cir. 1961)]. Shavin's case was the talk of LaSalle Street at the time. I tried a number of drug, bank robbery and interstate commerce crime cases and criminal civil rights prosecutions. What made an enormous impression on me during these trials was that there's a lot more to jury trials than simply presenting the facts and waiting for an appropriate verdict.

CTF: What about cases as a private lawyer? Anything stand out?
JFG: Yes. The one that stands out the most is one that I tried by court appointment in about 1973, three years before I came on the bench. This one more than counterbalances the few bad experiences I had with juries as an AUSA. A gang of young men known as the De Mau Mau, had cut a swath from southern Illinois up to Lake County and murdered a number of people, including a truck driver. Five members of the gang were arrested for the murder. There had been a lot of publicity linking the De Mau Mau with the murder of a family in Barrington Hills.

While awaiting trial in the Lake County Jail, the defendants requested that they be put in the same cell so that they could prepare their defense. The judge granted the request. One morning, two of the five were found strangled to death. The other three were indicted for the murder of the two. I was appointed by the court to represent one of the three.

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He happened to be the biggest, strongest, the most likely-looking ring leader. I had never tried a murder case before. During jury selection the first panel of four tendered to us by the prosecution had on it the President of the R.R. Donnelley Company who lived in Barrington Hills and was a neighbor of the family that had been murdered. There was also a college professor. Counsel representing the other defendants wanted to excuse Mr. Donnelley and the professor. I was able to persuade them not to. We had a defense that was not going to appeal to the average juror. We needed people who would be able to distinguish between hunch and evidence and would be willing to hold the State to proof beyond a reasonable doubt. So after consulting with our clients, we accepted the panel, to the surprise of the prosecutors, who then began selecting only blue-collar workers. They also excused all black jurors. Our clients were all black and we objected, but this was before *Batson* [*Batson v. Kentucky,* 476 U.S. 79 (1986)], and the judge simply overruled us. But we had our key jurors and Mr. Donnelley became foreman of the jury. The verdict was not guilty for all three defendants after a trial of many weeks. We took almost two weeks on jury selection.

Afterwards, we talked to one of the jurors about the defendants not having testified. He said that that was the one of the first comments in the jury room, but the foreman said, "Just a minute, the judge said we are not to consider that and we are not going to consider that." So that's the other kind of experience I've had with the jury system. Not to mention all the favorable experiences I've had as a trial judge but that unquestionably was the most important and satisfying case I ever tried. Interestingly, I never discussed with my client whether he was guilty or not and I'm sure the same was true of the other two lawyers.

CTF: Any other cases that you can think of?
JFG: I tried a case on behalf of a theater owner in North Chicago against Abbott Laboratories. Abbott manufactured a drug through a fermentation process that caused a terrible odor which made the town of North Chicago very unpleasant as a place to live and do business, but it's a company town and most of the residents wouldn't think of complaining. But my client was an independent sort and he believed that the patronage at his theater was adversely affected by the smell from the factory which was only a couple of blocks away, so he hired me to sue Abbott. This was in about 1965 or 1966, before any of the environmental statutes had been enacted. Believe it or not, there was a time when there was no EPA and there was no OSHA, none of this bureaucracy and statutory regulatory regime that we are so familiar with now. All we had back in those days was the common law of nuisance. So I sued Abbott Laboratories for creating a nuisance. (We tried the case before the judge who had aspirations for the federal district court and who was later to be disappointed by my appointment.) The case was hotly contested and the question of damages was an interesting one. How do we prove that more people would come to the movie if it didn't smell so bad, how many more people would come, and how much revenue did we lose and so on. I won the case and got a relatively modest damage award. The injunction I was seeking was denied, which of course would have shut down Abbott Labs, something that judge was not about to do. Abbott appealed and I wound up in the Illinois Appellate Court for the Second District. See *Schatz v. Abbott Labs., Inc.,* 269 N.E.2d 308 (Ill. App. Ct. 1971). One of the panel members was a visiting judge from the Springfield area. He wrote an opinion reversing the judgment on a ground that had not been argued on the appeal and had not been raised in the trial court. I petitioned for rehearing, arguing that (a) they were wrong, and (b) I had been denied due process. They had taken my judgment away without giving me an opportunity to be heard. Motion denied without comment. I sought leave to appeal to the Illinois Supreme Court on the due process ground, and to my surprise, they granted leave. So I went down to Springfield and argued that case and won. In *Schatz v. Abbott Laboratories,* 281 N.E.2d 323 (1972), the Illinois Supreme Court reversed the appellate court on the due process ground. That gave me such a shot in the arm. Here again, justice prevailed. Just hang in there and things will come out right.

Another case that was very important was a case that I didn't try but I argued on appeal. It was a case tried in Lake County involving a dispute between the Serbian Orthodox Church headquartered in Belgrade, Yugoslavia, and the local Serbian Orthodox Church. The dispute was over the ownership of the monastery up in Libertyville, and the local people had won in the Circuit Court of Lake County. A friend of mine who had been the trial lawyer asked me to help on the appeal. Bert Jenner was on the other side.

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I argued that case in the Illinois Supreme Court against Bert and won. When Jenner found out that I was being considered by Senator Percy for nomination to this court, he tried his best to talk the Senator out of it on the basis that I was just a country lawyer, unsophisticated, and didn't know anything about Chicago, etc. I learned about his effort, by the way, from a member of Senator Percy's staff long after my appointment. I ran into Bert at a Seventh Circuit Judicial Conference later on. He congratulated me and said he was delighted by my appointment.

The losing side in the Serbian case petitioned the United States Supreme Court for *certiorari* and we thought there was about as much chance of that being granted as the sun not coming up. Petition granted, and unfortunately for me, I had let Jim Parsons talk me into coming aboard here at the earliest possible time and the Supreme Court argument wasn't held until after I took office. So I could not take advantage of the one and only chance I ever had to argue a case in the U.S. Supreme Court. The guy who brought me into the case argued it and lost.

CTF: John, I don't know another judge that came here as a solo practitioner. Do you know anyone else?
JFG: I have never encountered one. Maybe we'll get into this as we go along here this afternoon. But my having been a sole practitioner has a lot to do with my judicial philosophy and especially with my attitude toward attorney's fees and the obligation that lawyers have to do a day's work for a day's pay.

CTF: Does it also have a lot to do with the ease with which you can make the transition from being a sole trial lawyer to in effect being a sole judge?
JFG: I think so. I was wondering whether it was going to be difficult from a temperamental point of view first of all. Could I cease being an advocate and become an impartial arbiter? That turned out to be a piece of cake. I had absolutely no trouble disrobing myself as a gladiator. Perhaps I was ready to do it long before I did. The other question in my mind was whether my lack of any federal civil experience would handicap me in handling my caseload. I erroneously thought I would be dealing with a lot of tax questions. The first law clerk I hired was a lawyer/CPA because I thought I could use the help. Well, I've never had a tax question of any complexity in my thirty years on the bench.

CTF: But when you came on board, I think you came on board at a time when there wasn't a random assignment of new cases to a judge?
JFG: There was sort of a hybrid system at that time, Collins. It wasn't the old system that Judge Miner was so aggrieved about that he wrote a letter to Senator Dirksen complaining about how they loaded him up with all the bad cases, the antitrust cases and so on. I don't know what Senator Dirksen said. He probably said there was nothing he could do for him. I didn't have that experience but I did have my share of old, complicated cases, and the way that could come about even under the random reassignment system until we made some adjustments to it, was that the people who wanted to play games could still play games. For instance, there was a practice of withholding from the random reassignment pool any case that was "about to be settled." Well, guess what cases were about to be settled? The simple ones, thus increasing the odds that the old dogs would be reassigned and there was a member of the court who specialized in that. When I became chief judge years later, one of the first things I did was to bring about the elimination of that wrinkle in the reassignment system.

CTF: What about the patent cases you got — that must have been a new area of law for you?
JFG: Ironically, I thought I would dislike them and was prepared to, but to my surprise, I was fascinated with the subject matter and really enlivened by the competence of the typical patent trial lawyer – extremely intelligent, witty, innovative, masters of demonstrative evidence. They can draw a picture of anything and I found that patent cases were very interesting and very challenging. Most of them were bench trials initially and I would simply ask questions and have them repeat their answers if I didn't understand. And I'd warn them in advance that my wife does all our home repairs, so they better come prepared to make it clear, and they did. So I decided some very complicated patent cases, expecting there to be appeals and there weren't. Oh, I can recall one of them being reversed by the Federal Circuit on the question of obviousness.

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Then there came the time when everybody was demanding jury trials in patent cases. That was a lot more work than a bench trial, because I was no longer free to say "could you repeat that answer," etc. and I used to worry about the jury. It was about that time that I initiated my practice of allowing the jurors to ask questions and I have had that practice for more than twenty years now.

CTF: Do you screen the questions?
JFG: No. What I tell the lawyers is to relax. If there is an objectionable question, I will explain to the juror that he or she can't ask that. But rather than me screening them and then rescreening them for the follow-up question, I let them simply ask.

CTF: How many objectionable questions do you encounter on trial?
JFG: Year by year, I'd say maybe one and not because it's an outrageous, inadmissible thing but just because perhaps it was irrelevant. It wouldn't help them to know the answer. The lawyers don't have to object in the event there should be an objectionable question. I tell them in advance to just sit there poker-faced and I'll take care of it. What I find is that allowing jurors to ask questions has several very beneficial effects. First and foremost, you learn whether the jury is understanding what is going on. Very often the question would be, "You are using the word 'so and so,' what did you say that meant?" Well, in the typical courtroom, the juror can't ask that question. So the juror has to sit there while this expert witness is using this term over and over again and the testimony is going over the head of the juror. Sometimes the question is, "What page did you say that was on?" Again, it's a simple matter of bringing the jury up to speed on what's being said. With the exception of one case where I had a pugnacious juror, and had to cut off the questions, I have never had the cross-examination type question, you know, the adversary type question. Jurors know that it's improper without being told.

Secondly, it gives the jurors a sense of participation in the trial. They are not just bumps on a log sitting there, and they tell me after trial, "We sure loved being able to ask questions, Judge, it made us feel like a part of the process." And I think that having that ability, whether or not they use it — and sometimes I have gone through whole trials without a single question even though I've let them know they can ask — makes them more interested in what's going on and more satisfied with the judicial system when they leave here.

Another benefit of allowing jurors to ask questions is that it gives the lawyers an indication of how they are doing. Those questions indicate at the very least what the jury is interested in and maybe even, if the lawyer is sophisticated enough, lets the lawyers know in what way they are being deficient in bringing out the facts. I don't encourage questions in every single civil trial – but most of them – and I don't do it in criminal cases. I've suggested to counsel in criminal cases to consider allowing the jurors to ask questions and I get stony silence. No one is going to get accused of ineffective assistance because they refused to allow the jurors to ask questions. Both sides would object. So I don't do it with criminal cases even though I think it could really be vitally important, sometimes especially for the benefit of the defendant. Sometimes jurors might have doubts they'd like to pursue in the form of a question and they're not given an opportunity, so they go along with a guilty verdict. That's just my hunch.

Almost every time I allow questions in a civil case, I'll forget to ask the jurors whether they have any questions at the end of the examination of a particular witness and the lawyers will invariably remind me. They like it. They want those jurors to ask questions. There is never an objection and there's never an issue raised on appeal.

CTF: Do you allow jurors to take notes?
JFG: Oh, absolutely. I was the first one on this court to do that. I started doing that my first year on the bench despite the unanimous disapproval of those of my colleagues who commented to me about it.

CTF: It would be interesting to know if the first district judge got that reaction when he made the decision to give the jurors copies of the jury instructions. That was not well received. Now we think, "Why wouldn't we?"
JFG: Instructions in writing, of course, were second nature to me because of the state system and my being on the IPI Committee and I was astounded that many of my colleagues, if not most of them, were not doing that. At the present time, and for some years now, I send in twelve copies of the instructions to the jury. First I sent in one set, then I sent in three sets and finally one time a juror raised his hand and said, "Hey Judge, how come we don't each get a set?" So, from then on, I've been sending in twelve sets, and with the xerox machine you know, it's not that tough.

I'm a big fan of juries. I'm a believer in their competence to handle anything that comes their way. I'm a believer in their sincerity, their diligence and their dedication to getting it right and I just don't buy these criticisms of the jury system from the ivory tower.

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Now I will say this, however, it's a lot more work than a bench trial. A bench trial is a walk in the park compared to a jury trial, especially when the case is complex, and one of the reasons for that is that I always have to do the instructions myself. The lawyers don't give me much help. In the criminal cases it's not too bad because they tend to be repetitive. But you take your average diversity case, they're often *sui generis.* We don't get many rear-enders here. The diversity cases are mostly breach of contract, some kind of state law tort or something like that and you don't get those instructions out of a form book. You've got to do some thinking and some drafting and generally speaking the lawyers are just not very good at that. While I used to say, "I want you guys to have your jury instructions ready on day one or day three," I don't say that anymore. I just assume I'm going to do them. If they volunteer, I say, "Fine, I'm happy to look at what you submit. I encourage you to do so." But I have no expectations, and that's a shame. I always did my own jury instructions when I tried cases but that's the way I tried cases. I was ready to go and I suppose that was one of the reasons I was a good pick for the I.P.I. Committee.

CTF: Since you were a trial lawyer, there have been big changes in the use of technology in the courtroom. There are notebooks of exhibits and use of technology so that everybody is fully on the same page. Can you talk a little bit of the technology in use and the way lawyers try cases and the way judges decide cases.
JFG: I think there have been some very great improvements in visual presentations. Back in the days when I tried cases in the state court and even during my first years on this bench, if there were important exhibits, there would be one and it would be in the hands of the witness as he was testifying about it. The jury wouldn't see it, and even the opposing lawyer would have to look over the shoulder of the witness to see it and it was really an unsatisfactory way of handling it. Then came the exhibit books. I'd ask the counsel just to limit those to the important exhibits, not everything, and that was a great improvement. Each juror would have the exhibit to look at. Then the first case I can remember with this overhead projection technique was the Sanitary District bribery case back in about 1978.

And then, starting maybe three or four years ago, this ELMO procedure came in which is essentially the same as the overhead. I don't know why it's considered so technologically advanced but that's fine too. There is no doubt that the trial is expedited and juror comprehension is improved by these visuals. Now, there are things that are being done that I think are useless and distracting and also very expensive, and that's this playing back of testimony or watching a screen where the judge and the lawyers can follow the testimony as it goes along – utterly useless. I've seen the equipment in my courtroom but I have yet to see any lawyer make any productive use of it. So, I'm not impressed with that technology. I'm trying to think of what else there is ....

CTF: What do you see as the difference between six-person and twelve-person juries?
JFG: Zero. That's my experience. I was shocked when I got down here and found there were six-person juries. I didn't even know that. We'd pick twelve people to try an intersection accident up there in Waukegan – take two days out of their lives to see who had the red light. When I first got down here I thought, "God, this has got to be some kind of a constitutional issue," but it didn't take me long, maybe the second or third case, to decide, "Hey, there's no difference and this is good. This is saving the time of the jurors; saving the time of selecting the jurors. It's efficient." And it's altogether consistent with the rights of the parties. It's the old story we were referring to earlier, "Oh, no, you can't let jurors take notes. Oh no, you can't let jurors ask questions. Oh no, you can't have six-person juries." These challenges are made by people who haven't done it. They are made by people who come from jurisdictions where they take twelve jurors and decide what color the light was and think they can't do it any other way. I think that once you try it, most people will be sold on it unless they've just got a blind spot. So I'm all for six-person juries. I don't think I would want to go with less than six persons. I've heard it said that the reason for twelve is that if you have twelve you're going to have all idiosyncracies included. If you have six, you're going to have less of a spectrum. I should say that I always pick eight, now that the rules allow all jurors who sit through the trial to deliberate. You don't have to let them go. So it's not just six, it's eight. It seems to me that eight comes about as close to being a representative cross-section as twelve, because that twelve is as likely to include two plumbers from Cicero as it will twelve people with completely different backgrounds.

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CTF: Somehow I get the feeling that you, as a trial lawyer, did not make use of jury consultants. Did you even know of them?
JFG: I never heard of the term. In fact, it did not exist to my knowledge. It's another cottage industry that has grown up. It appeals to neophytes in the trial of cases. These people tout themselves as having some kind of insight that they don't have, but woe be to the lawyer in the big case who doesn't hire one and loses the case and the other guy hires one and wins the case. That's why this guy would be fired by his corporate client and wouldn't be hired again. These various specialities manage to insinuate themselves into the trial process and charge huge fees as trial consultants. Back in my day, accident reconstruction experts were the big specialty. I never used them. I have no confidence in the consultants' ability to size up a juror any better than a good trial lawyer's.

CTF: Do you allow the attorneys to talk to the jurors after a trial?
JFG: I do when I'm not concerned about lawyers who have no judgment about what to do and what not to do. If I sense a lawyer really wants to try to find out something to impeach the verdict I won't permit interviews. Even though it's unlikely they could impeach the verdict, they will nonetheless try. Also, I won't allow interviews of jurors who might be selected in another case. Only when this is their last case in the building will I allow it. The way I handle it is that when I go in to talk to the jurors after the verdict I will ask if any of them want to talk to the lawyers. Any who do can remain in the jury room and I'll send the lawyers back in. I tell the jurors not to disclose anything about their deliberations, but to give the lawyers hints about what they did right or wrong that might help next time. Almost invariably all or most of the jurors will stay behind.

CTF: I think you have made some cuts in attorney's fees that people have taken up on appeal.
JFG: First, my feeling about fees. It was generated during my practice. I saw lawyers who did little or nothing in personal injury cases taking a third of the settlement; never a verdict, always settling the cases. Sometimes that could be justified but usually not. In my own practice, I handled a lot of personal injury cases and tried to charge a fair fee based on the result and how much work I did. Rarely was it a straight one-third of the recovery except for cases where I had a referring lawyer who had already entered into that kind of contract with the client. If I settled it, sometimes it was ten percent. Whatever seemed to me to be reasonable compensation for the work I did, the result and the risk I took in the particular case that I wouldn't be paid at all.

When I was under consideration for this job, I got a call from John Schmidt, President of the Chicago Council of Lawyers, asking me to be the speaker at their annual luncheon. I asked him what he would like me to speak about and he said I could talk about anything. I said, "I think I might like to talk about contingent fee cases." He said fine, that should be interesting. So I gave a talk in which I said essentially what I just told you. The typical one-third fee in a case that may be total liability with insurance and little work just can't be justified because there really is no contingency, either about winning or collecting. Well, that speech marked me in some parts of the Chicago Bar as somebody who was against lawyers and against reasonable fees. I later wrote an article expanding on the theme of the speech at the suggestion of Alex Polikoff which was published in Litigation Magazine ("Some Ethical Questions About Percentage Fees." 2 Litigation 20 (Summer 1976)). I made a point to call them "percentage fees" rather than "contingent fees," because most of them are not contingent. That article generated a lot of talk in the legal community and Phil Corboy's daughter wrote a counter-article, *Contingency Fees: The Individual's Key to the Courthouse,* 2 Litigation, Summer 1976 at 27.

When I came on the bench, I didn't have any particular yen to start cutting fees. I wasn't even sure in what kinds of cases I would have occasion to rule on fees. But it wasn't long before I had a criminal case where a lawyer had done nothing more than talk to the young defendant for a little while before pleading him guilty and charging him $8,000, a lot of money for those days. I either figured it out or he told me that he spent just a few hours on the case and this young man was not a wealthy person. I told the lawyer to give all but "x" dollars of the money back. I explained that as the presiding judge, I had the authority to prevent him from using the process of this court to charge his client an unconscionable fee. He refused to return any of the money and I held him in contempt. I wrote an opinion, *United States v. Vague,* 521 F. Supp. 147 (N.D. Ill. 1981), explaining the basis of what I believed was my authority, and he appealed. My order was reversed, see *United States v. Vague,* 697 F.2d 805 (7th Cir. 1983) and that was my first encounter with the Seventh Circuit's view of the free market in attorney's fees as being totally divorced from any question of professional ethics. The question is simply what the traffic will bear. It was a shock to me to learn my view of right and wrong could be so different from another judge's view of the same issue. Well, that ended my intervention in fee questions where the exploited litigant had not made an objection.

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The main basis of the Seventh Circuit opinion was the fact that the client had not objected. The reason he hadn't objected, of course, was that he had no idea he had a basis for objecting. Because no client ever objects to a fee in a criminal case no matter how exorbitant, I have never had a fee issue in another criminal case. I do, of course, rule on Criminal Justice Act fee vouchers and I think I do about the same thing everyone does. I reduce them when they're excessive.

In civil cases I think my reputed bark is a lot louder than my bite. I think I grant the amount requested at least as often as I reduce fees. My decisions are seldom appealed; and, offhand, I can think of only one case where I was reversed. *In the Matter of Continental Illinois Securities Litigation,* 962 F.2d 566 (7th Cir. 1992). Again, there was a fundamental philosophical difference. Do fees involve an ethical question or not? The Canons of Professional Ethics make it quite clear that they do.

I mentioned before that my experience as a sole practitioner had a lot to do with my attitude toward fees. The connection is this. I didn't have anybody to consult with. I didn't have anybody to confer with. I didn't have anybody to make telephone calls to in house. You look at one of these fee petitions in the average civil case and it often consists largely of time entries for lawyers conferring with each other and writing memos to each other. No indication of what they conferred about or whether it did any good, just the fact that they spent the time. Under the hourly charge system, time is a surrogate for value. The value of time is conflated with the mere expenditure of time and the fee petition is often just a recitation of the alleged expenditure of time in consultations with colleagues, incessant reviewing of documents whose relevance to the case or benefit to the client is not explained. These are things I did not do in the course of my successful law practice and I don't think I would have done it even if I had had a partner to confer with.

He or she would have said that there was no time and no need to hold conferences about my cases. So I reacted with a great deal of skepticism to these "conferences" that can run fifty-percent of the average fee petition. What did the conferences actually do? What did they accomplish? The same with research. Research on what? I pin them down and very often they can't remember what the research was about. Legal research – that was another thing that was problematic for me. I wrote an opinion about these things early in my tenure on the bench. *In re Continental Bank Securities Litigation,* 572 F.Supp. 931 (N.D. Ill. 1983). Don't just list "conferences," "research," etc. Tell me what it was about and relate it to particular tasks. Don't give me a chronological series of unconnected time entries. Rather, if you took the deposition of Joe Smith, describe all the activity devoted to that deposition: preparation for it, the taking of it, the review of the transcript of it and tell me, was it ten hours, was it twenty hours? At the end of the case, if I see that there was no Joe Smith who was called as a witness or referred to at the trial, I'm going to question what this was about. Was it necessary? That's the kind of approach I take and it's based on what I learned in my own practice of law.

Naturally, the lawyers who thrive on busywork don't like my attitude toward fees but other lawyers agree with me. On the whole though, I'm glad my name hasn't been entered in any popularity contests.

Another problem with the hours claimed in fee petitions is that they're really impossible to verify. I rarely say in any opinion, "This is a false claim," because I can't prove it. The judge pretty much has to rely on the integrity of the counsel submitting the petition. There is something that we have done on this court that I can't claim any credit for but that has been of enormous assistance in recent years. We have a local rule that requires the lawyers to get together and work out their fee disputes and come up with agreement as to all items for which they can't articulate a specific objection, not just conclusory statements like "excessive," and then give the reasons for the remaining disputed items. The petitioner then gives the court his response.

The procedure has almost entirely eliminated this awful experience that we were all required to go through, wading through these voluminous fee petitions and trying to figure out what was what. The lawyer on the other side is in a much better position to know whether it is likely the attorney really spent ten hours researching something because, presumably, he researched the same issue and he knows how long it took him. The items that are ultimately submitted to the judge for decision are relatively few and are usually fairly easy to handle.

CTF: Being chief judge has been compared to "herding cats," to "being given the reins of a horse-drawn wagon, only the reins aren't attached to anything," and, my personal favorite, as "being the sexton in a church cemetery where you know there are a lot of people under you, but you don't think they are listening."
JFG: I think there's some truth to that. On the other hand, you have to temper that with the reality that there isn't really an awful lot that you want to tell people to do, or how to do it. Basically, we are twenty-three or however many we are, independent judges. We control our own dockets.

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We make our own decisions and the things that we have in common, as to which some leadership is necessary, are relatively few. That's the first point. The second point is that almost all of the judges realize that if this place is going to run right, you've got to have cooperation, so that, even when the chief judge does not have the authority to act on his own, a suggestion will almost always work. A request will usually be honored and then there's the executive committee which works with the chief judge and enhances his ability to get things done. When the rest of the judges are told that the executive committee has decided something, they usually won't argue. If you look at the local rule, it says that the administrative power of the court is vested in the executive committee. Who says that? Is that in a statute somewhere? Of course not, but it's accepted.

CTF: What were the most important issues that you dealt with as chief?
JFG: The thing that made that job doable was that Olga Claesson was my administrative assistant. She had worked for Frank McGarr and Jim Parsons and she knew everyone at all the agencies. She was a wonderful liaison person to have. In the summer of 1986, GSA had a plan to move the courts out of this building and they were going to build us another building apparently in this vicinity. I knew the kinds of new courthouses that were being built because I had visited them in conjunction with committee work, and they were tiny courtrooms, cramped halls, the kind of facilities that would not hold a candle to this one. I knew that the prospect of replicating this building for a new courthouse was nonexistent. Well, GSA held a conference up in Lake Geneva to which I was invited and I took Olga with me. I didn't know who was going to be there but it was to discuss the problems with the various tenants of which we, of course, were one. The then-head of the GSA, who was in his last week before retiring, approached me at the meeting to discuss our court moving out of the Dirksen building. He found out that I was from Springfield, Illinois, and so was he. We immediately hit it off. He told me in private that if we wanted to stay in the Dirksesn building, he could arrange it, but we had to decide that day, otherwise he said, "the horse is out of the barn and you are going to have to move to another building when it is built." So I said, "Let me talk to Olga." We went to another room and I asked her what she thought. She said she didn't think we should move, which is what I thought. So I made the deal that day and upon my return to Chicago, I called a special meeting of the court and the decision was ratified. Bill Bauer, who was then chief judge of the Seventh Circuit, also confirmed that decision. That is the most significant thing I did as chief judge, and nobody here knows about it except you, me and Olga and, of course, the judges on the court at the time.

CTF: Why did you leave as chief judge when there were three years left of your term?
JFG: The main reason – certainly a significant factor – was the job involved a significant time commitment for matters that I found extremely boring. Under our local procedure, the chief judge is in charge of the grand jury and that involves a great deal of time, and there were many other administrative duties that were time consuming. I was a judge; not an administrator. While I did the work and I think I did it competently, I found it very boring. Having taken the job — I could, after all, have turned it down — I thought I had to stay with it a reasonable time, but I doubted that I could stand it for seven years.

CTF: What do you think are the most important cases that you tried as a judge?
JFG: I would like to say the Lake Michigan pollution case, which had originally been filed in the Supreme Court, but which the Court remanded to the district court for trial on the theory of common law nuisance. [*Illinois v. City of Milwaukee,* 406 U.S. 91 (1972)]. The plaintiffs were the State of Illinois, and the State of Michigan intervened. The defendant was the City of Milwaukee. The claim was that the citizens of Illinois and Michigan were being injured as a result of the discharge of raw and insufficiently treated sewage into Lake Michigan. The scientific questions in the case were complex and interesting. It was a bench trial and it took six months. I held in favor of the plaintiffs and ordered Milwaukee to adopt what is known as tertiary treatment of its sewage before discharge into the lake. This was an expensive remedy, but one I thought was necessary to protect the lake. Milwaukee appealed. The Seventh Circuit reversed in part, saying that I had gone too far and reduced the treatment requirement. [*People of the State of Illinois v. City of Milwaukee,* 599 F.2d 151 (7th Cir. 1979)].

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Meanwhile, the Supreme Court came along in a similar case and held that there is no federal common law of nuisance. The Federal Clean Water Act providing for much lower treatment standards, had according to the Court, preempted the field. [*City of Milwaukee v. Illinois,* 451 U.S. 304 (1981)]. I had to vacate my order and my six months of work went down the drain (so to speak) and Milwaukee to this day is discharging raw sewage into Lake Michigan, and according to a recent TV program, the EPA is about to let Milwaukee increase its discharge. Had my decision been ultimately affirmed in that case even in part, I would regard it as my most important case. As it turned out, it was a waste of time.

The case of MCI v. AT&T was an antitrust jury trial resulting in a $600 million verdict. I trebled this to $1.8 billion, which they told me was the nation's largest civil judgment up to that time. It was reversed and sent back for a new trial on damages only. The Court of Appeals held that some of MCI's antitrust theories were not viable but others were, so the case was remanded for a new trial on the ones that were viable. [*MCI Communications Corp. v. American Tel. & Tel. Co.,* 708 F.2d 1081 (7th Cir. 1983)]. The parties ultimately settled the case after the second trial.

I'm trying to think of other civil cases I've tried that might have some lasting effect and none occur to me offhand. I tried an interesting case brought by a transsexual alleging sex discrimination. The case was *Ulane v. Eastern Airlines, Inc.,* [581 F. Supp. 821 (N.D. Ill. 1983)]. I held that firing the plaintiff pilot because she had a sex change operation from male to female was sex discrimination. The Seventh Circuit reversed in a remarkably terse opinion. They just said, "This isn't sex discrimination." [*Ulane v. Eastern Airlines, Inc.,* 742 F.2d 1081 (7th Cir. 1984)]. My point was that Congress had not defined "sex" in the statute and I thought the term literally applied. It had been inserted as a last-minute effort by southern senators to scuttle the Civil Rights Law of 1964, which was primarily concerned with race. At any rate, I gave it the interpretation I thought was right but that decision didn't survive either.

Another case I decided, I can't remember the name, was on a claim brought by some Mexican aliens who contended that immigration quotas designed for Mexicans were diverted by the Immigration Service to South American immigrants, contrary to the intent of Congress. [*Silva v. Bell,* 605 F.2d 978 (7th Cir. 1979)]. I agreed with plaintiffs and as a result 50,000 Mexicans were given visas. It was an important decision for those particular people, and it was apparently also important for a lot of anonymous Texans who showered me with threatening letters. Nothing ever happened, but I sure did make a lot of people furious down there in Texas.

CTF: You mentioned that you did some important work in criminal cases.
JFG: Let me start with what I think was perhaps the most important thing I did in the criminal area. That was a substantial upping of the ante in political corruption cases. When I came on the court, people convicted of political corruption were traditionally treated as white-collar criminals and were not generally speaking given substantial sentences. Probation or a short period of incarceration was the rule. The first such case I had was in 1977. It involved the payment of $1 million in bribes to officials of the Metropolitan Sanitary District as an inducement to award the defendants a contract to haul sludge by barge from Cook County to downstate Illinois. After a long trial, the defendants were convicted. The appeal was complicated enough that the opinion was written by three judges who divided up the issues. [*United States v. McPartlin,* 595 F.2d 1321 (7th Cir. 1979)].

I was pleased that I had been able to handle a case of that complexity even though I was relatively new on the bench. I gave lengthy sentences which included ten years for the president of the Sanitary District. This was something new. I gave an extended explanation of the sentence which was quoted in the editorial pages of the newspapers. I'm pleased to say that since that time the ante has stayed up. Interestingly, it's the sentencing guidelines that came in 1987 that pushed them down again. The guidelines are money-driven, so maybe a $1 million bribe would still be up there. Anyway, I think that would be my major contribution to the community as far as criminal cases are concerned – fair adjudication followed by meaningful sentencing designed to deter public corruption.

You mentioned the "Marquette 10" case [(*United States v. Ambrose,* 740 F.2d 505 (7th Cir. 1984)]. That came along about ten years later and involved ten Chicago police officers who were taking bribes from dope dealers. After a long jury trial they were found guilty. I gave them very substantial sentences starting at twenty years and going down to eight years. I thought at the time, and even said, that the case was going to be a significant deterrent to police corruption. Never again could policemen bank on the proposition that no jury would believe a dope dealer when he says that he bribed a policeman.

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These witnesses, by the way, were the worst of the worst. They were professional drug peddlers and had lengthy criminal records. Many of them were drug users, but they were also very bright, articulate and credible witnesses.

Events have proven me overly optimistic. There have been several virtually identical cases in this very building subsequent to *Marquette 10*. There's an investigation going on right now, or maybe an indictment has been returned, against several Chicago policemen alleging the same kind of bribe taking from dope dealers. That raises the question whether we are kidding ourselves when we think that criminal sentencing deters. That really is a fundamental premise of our system which I think there is reason to wonder about. Maybe the answer is that long sentences do deter those who are not risk-takers. If people knew they could break the law without risking substantial incarceration, undoubtedly many more of them would commit crimes, especially property crimes. So in that sense, punishment does deter. I know of no way to demonstrate that empirically. But in any event, the real risk-takers especially those with no moral compunctions, aren't going to be deterred by sentences imposed on someone else.

CTF: What was the toughest thing about trying that case? Was it ten defendants, ten lawyers at least on one side and you've got the government...

JFG: The toughest single thing was one lawyer who was ungovernable. She was the only female lawyer on the defense team, and I think there was some sort of macho thing going on, but she insisted upon disobeying my rulings. I forget whether it was on one subject or on a variety of subjects. So I called her over to the sidebar and said, "Please don't do this in my court. I don't want to hold you in contempt but if it's necessary to maintain order, I will do it." She did it anyway and I held her in contempt – not once – but twice during that trial and, as you know, if you hold somebody in contempt you have to write an order reciting what they did. So with everything else that I had to do in that trial, I had to take time out to dictate two separate orders explaining why I was holding that lawyer in contempt so that it would stand up on appeal. I fined her I think $500 the first time and a little more the second time. I stayed execution, three days or something like that, so she could appeal. Well, it did the job – she didn't do it anymore. I have held a lawyer in direct contempt only twice in all my years on the bench. Those were the two times – the same lawyer, the same trial. That took a toll on me. Maybe it shouldn't have, but the thing that irritated me so much was that it was so unnecessary, and it added so gratuitously to the task I already had trying to manage this very complicated trial. By and large, the other lawyers conducted themselves quite properly.

The prosecution was extremely well done. Dan Webb was the prosecutor and he is undoubtedly one of the best trial lawyers who has ever appeared before me. He was assisted by Jim Schweitzer, now a partner in a Milwaukee law firm, and he was also an outstanding lawyer.

CTF: You've made reference to the sentencing guidelines and we've now come full circle from when there were sentencing councils.

JFG: I am one of the few district judges left who predates the guidelines which came into effect in 1987. I came on in January of 1976 so I had a good ten years of experience with discretionary sentencing. Let me tell you my view of that system. The disparities in the sentences imposed by the judges of this court were a disgrace to the administration of justice. There is absolutely no doubt that different defendants with similar backgrounds who committed essentially similar offenses could receive probation in one courtroom and, in a courtroom down the hall, five or ten years. I think that Congress was quite correct in concluding that something had to be done to create some kind of equity in sentencing. The sentencing councils which I attended on various levels were totally ineffective.

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Our local sentencing council met in Judge [Hubert] Will's chambers once a month. To prepare for it, we would read each other's pre-sentence investigation reports on cases set for sentencing. We had eight or ten members of the council and it took a lot of time to read all those reports. We would come to the meeting prepared to state what sentence we would impose in each case. The results were fairly predictable. Some judges would give probation in almost every case, while other judges would incarcerate for lengthy periods. One judge's rationale for everything was well, if you send this fellow to jail he'll lose his job, or, if he wasn't employed, there would be some other reason for probation. Other judges would emphasize the need for punishment and they would differ as to how much punishment would do the job. I never had the sense that I convinced anyone of anything. I stopped attending after a couple of years.

Once we went as a court down to Texas for a Sentencing Institute with the Fifth Circuit. That was an experience I'll never forget. The idea was to see how we compared with them as a circuit. Those Texas judges would give ten years to a first-time mail thief. I can remember one judge who later became chief judge of the Fifth Circuit. I think his very words were, "This is the United States mail. You mean you're gonna not incarcerate somebody who steals from the United States mail?" and he didn't mean just a short incarceration. He meant a long incarceration. It was clear that the disparities highlighted at that conference were just a microcosm of what existed nationally. And the reason for it was not that one judge was clearly right, or another clearly wrong, or one more reasonable than another. The difference was that we had different philosophies. We had different likes and dislikes – different experiences in life. So, in my opinion, the country had to adopt some means of attaining a reasonable degree of uniformity in sentencing. The guidelines seemed to me at the time they were adopted about the best that anyone could do.

The Supreme Court in *United States v. Booker,* [543 U.S. 220 (2005)] set aside the mandatory guidelines and instructed district judges to use them as advisory. The appeals courts are to review sentences for reasonableness. I have an uneasy feeling that disparity might return. I anticipate that district judges will pretty much adhere to the advisory guideline ranges and impose sentences outside those ranges only where they think it's pretty clearly reasonable to do. On the other hand, with "reasonableness" as the standard of review, I wonder what's going to happen when different circuits and different panels within the same circuit review what district judges do. But maybe this is the best system there could be, and we'll just have to live with whatever level of disparity is the inevitable result of the fact that, after all, we're dealing with matters of opinion.

I can remember Judge (now Justice) Breyer when the guidelines were being formulated, going around giving these talks telling judges that the guidelines would be a great thing. And invariably in answer to the question, "What if I don't think the guideline sentence is appropriate?," he would say, "Depart.– just depart." Well, if there was ever an overly sanguine outlook, that was it. Prior to *Booker,* the judges on our court believed a departure, especially a downward one, was almost certain to be reversed on appeal. It remains to be seen how "deviations" from the now advisory guidelines will fare on appeal.

CTF: Tell me about your family.
JFG: I married my wife, Patsy, in 1968 and we have a son, John Francis Grady IV, who was born August 29, 1970. He's our only child. He was a delight throughout his boyhood. We were and remain very close – the three of us. We started out in Waukegan and he went to parochial school there. We moved to Wilmette when he was in fourth grade. He went to public school there and graduated from New Trier High School, the University of Iowa, where he graduated *cum laude* and Phi Beta Kappa. He graduated from Northwestern Law School in 1996. He was a partner at Arnstein & Lehr in the litigation department and then in 2009 became a founding partner of his own firm, Grady, Pilgrim, Christakis and Bell in Chicago. I could not be more proud of him. He is so bright and knowledgeable about so many aspects of the law that I don't know anything about. He's learning every day. His major regret professionally is that there are so few cases to try. Cases that go to trial are few and far between – largely, in my opinion, because of high legal fees. People are forced to settle. In fact, he sometimes has to tell his clients, "You can't afford to try this case. My fee will be 'x' dollars and you can settle for less than that."

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The days when I would try a jury case in Waukegan for three days and charge $1,000 are long gone. They want $1,000 just to talk to you the first day. But he's enjoying the practice of law and the real challenge of having his own firm. He shares my ethical views and regards the practice as a profession, not simply a business. He's independent – you couldn't make him do something he doesn't think is right. He's married to Jenny, who has an MBA from Indiana University and worked for the Whirlpool Corporation for a couple of years before quitting when she became pregnant with Patrick Grady, who was born in September 2003. He might have been John Francis the V, but, as John explained, "Dad, we just have to quit this at some point." I was delighted that they chose his name "Patrick," which was the name of the first Grady who came to the United States. Patrick lives with John, Jenny and his younger sister Lily, age four, eight blocks from our house. We see them often.

CTF: Someday Patrick and Lily Grady are going to be reading this and why don't you tell them and the rest of us what motivates you? You already revealed that you liked being a trial lawyer, you like being a trial judge, you appreciate that you've been given the gift of being in a profession. Why don't you elaborate?

JFG: I am motivated, Collins, by a desire to perform what I regard as the best kind of public service that I'm suited to perform. I have literally no skills other than lawyering skills, judging skills. I can't fix a broken pipe. I can't understand most complicated scientific matters. I'm strictly a liberal arts graduate who is interested in ideas. I love to read. I love the arts and I am firmly of the view that my significance as a person is to be measured by the service that I am able to perform for other people. I've believed that for as long as I can remember. That's what motivated me to enter the practice of law and that is what accounts for the fact that I spent a substantial part of my time while in private practice engaged in disciplinary work for the bar association. I was directed toward improvement of the profession. It accounts for my pleasure in accepting the offer of this job. I knew it would provide me an opportunity to render public service on a scale that was not possible in my one-person law office. There, I represented individuals and corporations. The results of my efforts rarely had significance beyond the fortunes of the litigants. I did have the feeling that to the extent I was practicing my profession honorably and competently, I was contributing toward its betterment. I was, in a general way, adding to the common good. One of the things that differentiates this country from most others in the world is a relatively just legal system and, to the extent any lawyer or judge contributes to the maintenance or improvement of that system, he or she renders a vital service to the nation. I was pleased when I came on the bench and found the cases I decided, most of which I can't even remember now, did sometimes have an impact beyond the spheres of the particular people involved in the dispute. Especially now, with this Westlaw system where everything gets published, I find myself cited with some frequency, including to myself. So, lawyers read everything you do and if it has any merit it's like dropping a pebble in the lake and seeing the concentric circles expand. My desire is to deal with litigants, both civil and criminal, in a way that is fair and just. I know that I won't always be right but there is no excuse for not always being fair and I believe that I am always fair. I am unaware of any axes that I have to grind. I don't dislike any group of people except perhaps lawyers who abuse their clients. Therefore, I have remained on as a senior judge to continue performing what I believe is a worthwhile public service. I'd be very disappointed if it is not. The question that crosses my mind from time to time is, how long should I go on? I've been a senior judge now for 10 years, and the answer I always give myself is, as long as I can continue making what I regard as a significant contribution to the public good and as long as my health, mental and physical, is good, I'll continue as long as I'm permitted. I have no plans to retire at any particular time. My plans will be dictated mostly by my health. When I compare what I'm doing now on a daily basis to what I'd be doing if I retire altogether, there simply is no comparison. At least when I practiced law in Waukegan, I was helping people – accomplishing good in that respect. If I were to retire now, I couldn't return to a law practice. I suppose I could do various kinds of volunteer work. But I believe that I'm rendering a greater public service in my position as a senior district judge. That's my motivation.