9 1981 – 1990

WHICH WAY TO THE NEUTRAL CORNER?

The year 1981 began on a somber note with the passing of Myles F. Gallagher, a prominent member of the referee staff. He was destined to be honored by the Cuyahoga County Bar Association with the Public Servant Merit Award, but passed away just 2 days before the award luncheon.

A case appearing before the U.S. Supreme Court featured the City of Cleveland vs. Columbus-based magazine publisher Larry Flynt. The legal question at the crux of the matter was whether former Cleveland Assistant Law Director Bruce Taylor arbitrarily singled out Flynt for prosecution of sexuality explicit material. Taylor's complaint against Flynt and his publication, *Hustler Magazine*, for "Pandering Obscenity", was first heard by Cleveland Municipal Judge Salvatore Calandra. He dismissed all charges without trying the case on the facts. Calandra's ruling found that singling out Hustler, when so many other – some more sexually explicit – magazines were available in local adult bookstores, constituted discriminatory prosecution in violation of "equal protection of the law" guarantees.

This ruling outraged Taylor, who appealed the case to the 8th District Ohio Court of Appeals. That court overruled Calandra and ordered Flynt to stand trial. On further appeal, the Ohio Supreme Court agreed with the 8th District. The matter was later accepted for hearing by the U.S. Supreme Court.

Taylor stated he singled out *Hustler* because the magazine's sexual content was *"more shocking"* and appealed to *"a lower mentality"* than the more sophisticated competitive magazines such as *Playboy* and *Penthouse.* No doubt, Taylor counted himself among the more cultured readers. The Supreme Court issued their ruling on May 18th. The court ruled 5-4 that Flynt and his magazine was not the target of selective and discriminatory prosecution. This ruling gave the city the right to resume their case against him for pandering obscenity. City Prosecutor Jose Feliciano was left to decide to charge Flynt or let the matter rest. [1]

The 1980's ushered in a new era for the court when the new computerized Criminal Information System, PROMIS (Prosecutor's Management Information System), became operational in June of 1981. Our court was the first municipal court in Ohio to implement this system. This software enabled the court to collect information at the earliest possible point pertaining to each criminal case filed and to the case progress through final disposition. One of the great benefits the Court envisioned in PROMIS was the ability to make information available on a need-to-know basis in real time to all of the inter-acting agencies. In addition, it would make possible the automation of a number of detailed management and statistical reports.

What had to qualify as the greatest disappointment of the year was this Burroughs computer system. Lasting approximately eight months, the proverbial "plug was pulled" because of the systems incompatibility with the Cleveland Police Department and the Prosecutor's Office computers.

In December 1981 at the annual judge's leadership meeting, a dispute arose over who was entitled to cast a vote in the election of the Administrative/Presiding Judge. The controversy would prove disruptive for the next 3 months.

Outgoing Administrative Judge Lillian Burke allowed the outgoing judge, James Mulcahy, to cast a vote while denying the same courtesy to incoming judges-elect Ronald Adrine and Stephanie Tubbs Jones. Previous to this vote, the privilege of a vote had been granted in prior years, apparently at the discretion of the Administrative Judge. Judge C. Ellen Connally, who under similar circumstances was permitted to vote 2 years before, took offense with Burke (Republican) for excluding 2 incoming black Democrats. *"I'm very upset about this. She is a Republican and the 2 judges-elect are young, black Democrats."* Asked if this was politically motivated Connally snapped sarcastically, *"You figure it out!"* While Connally may indeed have been convinced Burke's move was politically motivated, it's difficult to accept. The voting for Administrative Judge was split between 3 candidates, all Democrats, and the out-going judge allowed to vote a Democrat as well.[2]

Burke sought an opinion from the city law department to determine the eligibility of the incoming judges-elect. The law department concluded that since their terms would not begin until January 1982, neither judge-elect would be permitted a vote. Although the eligibility matter was decided, the December meeting ended without a victorious candidate, so the matter was tabled.

Again in January, despite intense debate, they achieved no consensus. However, it was agreed that the jobs would be split, with Judge Clarence Gaines as administrative judge, and Judge Charles Fleming as presiding judge. The matter should have been settled.[3]

At the time, Ohio law gave the administrative judge control of the court's dockets while the presiding judge controlled the personnel and fiscal policies of the court. But confusion reigned when Gaines and Fleming, who had just agreed to split the job, could not agree on running the court; Fleming simply would not cede his authority, which aggravated Gaines to no end. At the January meeting, Gaines offered his resignation as administrative judge, an offer which the judges refused. It was decided to end the confusion through a secret ballot at the February meeting.[4]

Gaines accused Fleming of rewarding political allies with jobs. Unhappy with shared authority, he claimed in a memo that Fleming bought the election by promising to increase the staff of those who voted for him. Fleming, of course, denied the charges, saying the increase in bailiffs was at the request of Chief Bailiff John Flanagan. Judge Connally sided with Gaines. She said, *"I find it just too much of a coincidence that he (Fleming) gets 8 votes and now the court needs 8 new deputy bailiffs."* Gaines made further accusations in that memo. *"You also proposed the creation of a new position of administrative assistant to the presiding judge at a salary of $25,000 for your campaign manager*." Fleming disputed that contention, *"It was a job created by Judge Lillian Burke who had the job before I did."* Fleming also noted that his 2 campaign managers, while city employees, were not employees of the court. Judge Katalinas summed up the controversy. *"What we've got here is a good old-fashioned case of sour grapes. No matter how you squeeze them, it comes out vinegar."*[5]

The February meeting brought an uneasy truce between factions. The candidates did agree on one thing; neither was happy with the split of power. By a 9-5 vote, control of the court was returned to one judge, with Fleming the victor. Although the controversy was finally settled, the matter finally ended by a Common Pleas Court ruling on who exactly was eligible to vote. On April 14, 1982 Judge Bernard Friedman ruled that until seated, judges-elect were ineligible to

vote at judges meetings. Judge Adrine said he would not appeal the decision, *"the suit was filed to clarify the law and now we have a ruling. I'm satisfied."*[6]

In April of 1982, Judge Fleming stirred up controversy, by ordering all court employees to undergo police record checks. The goal of this directive was to insure the court was a good place to work as well as to counteract the negative effect the extensive federal investigation of the past decade had on both court morale and public opinion.

In May 1982 Judge Adrine recommended the court establish a Community Service Work Program. Serving as an alternative to jail in misdemeanor cases, this program was adopted and later funded through a grant from the Cleveland Foundation. Now known as Court Community Service, the program has produced several tangible benefits. The number of individuals incarcerated solely because of an inability to pay a fine has been reduced, a rehabilitative service benefiting both the offender and society was created, which has delivered an increased sense of self-worth on the part of the defendant.

When Judge Fleming assumed the role of leader of the court, he proposed a number of changes, not all of which were positively received. One of his least popular was the issuance of detective-style badges to be carried by his fellow jurists. These badges, which identified the bearer as a judge, cost the court $25.40 each, or $362.40 for all 14. Judge Connally reacted with controlled disdain, saying *"I feel it is an unnecessary expense to the taxpayer."* Similarly, Judge Frank J. O'Bell stated, *"I have no use for it."* Fleming did not reveal to his colleagues the actual purpose of the badges, but it is a practice that continues today.[7]

In 1982 an Alcohol Services Program was instituted. During this time the number of alcohol-related cases, particularly OMVI--Operating Motor Vehicle While Intoxicated was increasing dramatically. With the establishment of the Alcohol Unit the Court designated eight probation officers for specialized training in alcohol counseling. This type of training enabled probation officers to better identify alcohol dependent individuals and to counsel and refer individuals needing treatment to alcohol rehabilitation centers.

In 1982 the Court also adopted an experimental pretrial system for all criminal cases where a plea of "not guilty" is entered at the first appearance. Exceptions to this policy occur when the speedy trial provisions of Section 2945. 71, Ohio Revised Code, may jeopardize the case proceedings. During the pretrial proceeding the prosecutor would screen all cases appearing on the judges' criminal personal dockets. If the prosecutor believed the court should hear directly from a witness, after his review of the case, a summons was issued for the witness to appear before the Court. As a result, criminal cases were processed more expeditiously and there were far less inconveniences for witnesses.

Throughout much of the Court's history and to the present day, bail reform has been an ongoing pursuit. In 1982, the judges were reviewing the feasibility of implementing a Pretrial Release Program. The purpose of pretrial release was to assist the court in its ability to identify those accused felons who could be released on bail. This would be accomplished by investigating the background and community ties of the accused with the resulting information being presented to the judge in open court. A recommendation as to the least restrictive form of release necessary to insure the appearance of the defendant at all scheduled court proceedings related to his or her case would also be presented. As a result, the judges sought to predicate their decisions regarding bail at arraignment on meaningful information rather than on their previous hit-or-miss method.

In 1982 the court created the Workhouse Task Force to address the rapid deterioration of the Cleveland House of Corrections. The concern was mainly due to the fact that, as an integral part of the local criminal justice system, the facility was becoming overcrowded. The deterioration also included a lack of recreational, social and other rehabilitative services. The Task Force, comprised of concerned governmental and civic officials, was led by Judge George W. Trumbo. This task force was split into subcommittees due to the enormity of the problems attached to the correctional facility. These subcommittees sought to identify specific problems and to explore the use of community resources whenever possible. Several community groups were consulted in this review, including the Federation for Community Planning, The Greater Cleveland Growth Association, and various county and city officials.

During the summer of 1982 Mayor George V. Voinovich addressed a letter to the court delineating the problem of prostitution and its effects on individual neighborhoods in the city. Judge Jean Murrell Capers was appointed chairperson of a judicial committee to review the recommendations of the Mayor's Task Force on Soliciting Sex for Hire. As a result of this study, the court implemented guidelines to assist in adjudicating these particular violations of law.

In August of 1982, the financial limit in Small Claims Court was increased from $500 to $1,000. It was hoped that this raise would allow individuals greater latitude when seeking compensation, as well as increase the traffic within the Small Claims Court, thereby reducing the traffic in the General Division.[8]

Judge Ronald B. Adrine received special acknowledgment for initiating a successful new Two Day / One Trial jury in the spring of 1983. In addition to the financial savings to the Court, the new procedure saved local businesses over one-half million dollars in lost wages yearly and had a major positive impact on the economy of the City of Cleveland. The result of this program change impacted the citizens of Cleveland who were called to jury duty. Once an onerous burden of civic responsibility, jury service would now be more accommodating to the juror. Gone were the inconvenience, tedium and annoyance created by two weeks of sometimes useless waiting, hoping to be selected for a jury panel. The reactions of the jurors to this new procedure was instantly, and overwhelmingly positive. Adrine observed that, *"Aside from the obvious benefits, such as reduced costs and little to no disruption to jurors lives, I feel this system's greatest benefit is that people will no longer consider jury duty a waste of their time."* [9]

Chief Justice Frank D. Celebrezze of the Ohio Supreme Court refused to correct a technical mistake made by Cleveland Municipal Court when they neglected to obtain authorization to appoint retired Judge Theodore Williams as a visiting judge. Williams retired in December of 1975, yet remained on the bench several years, as a visiting judge. His questionable status was unearthed by the 8th District Court of Appeals when an appeal of a judgment he rendered was overturned because he was never duly appointed. When news of this oversight was revealed, the court was inundated with calls from couples for whom Williams officiated at their marriage ceremony. Celebrezze refused to sign a journal entry which would authorize William's service retroactively, but the court ruled the marriages performed were in fact legitimate. As to his judgments, the court ruled that in cases where the time limits to file an appeal had expired, the judgments were final. Although Judge Fleming did request Williams be named a visiting judge, he permanently retired shortly after this unfortunate episode.[10]

Carl B. Stokes was elected to the Court in November 1983, taking office in December. Present at the annual judges meeting that same month, he was elected Presiding and Administrative Judge. He was quoted:

> *"As the Presiding and Administrative Judge, I will direct my efforts initially to the following: (I) A more standard, accountable and efficient record-keeping system encompassing everything from caseflow management to data processing. (2) Greater public education as to the true function of the Court. We must banish the underlying belief that the Court can be a total problem solver. Resolutions must be sought within the family, the church or other appropriate public agencies whenever possible. In many instances there is a better forum for solving conflicts. (3) A re-dedication to the integrity of the Court in its response to a complex society, through a complete public openness. The Court cannot be surrounded by an air of mystery or a mystique that suggests "coverup" to either the public or the media."* [11]

Stokes' words should have been fresh in his mind when on April 26, 1984, the Clerk of Courts Office could not locate his criminal docket. This infuriated Stokes, who took this to be a personal insult. This prompted Stokes to unleash a tirade borne of his infamous temper. Directed to no one in particular and everyone in general, he ranted and raved in a phone call to the Clerk's Office, vowing *"heads would roll."* Stokes was quoted saying, *"I will teach them ___ not to ____with my files,"* an accusation Stokes never denied. Clerk Jerome F. Krakowski responded with a letter addressed to all the judges, stating that a municipal judge used scurrilous language in expressing his displeasure with missing files. He described the judge's actions as loud, abrasive and unprofessional. Krakowski characterized the call as a blatant attempt to intimidate members of his staff.

Jerome F. Krakowski

In retaliation, Stokes cited the Clerk for direct contempt for writing the letter. He said the letter had defamed, maligned and impugned the character and integrity of the municipal court judges. He further issued administrative orders requiring Krakowski to produce a number of documents and to institute a number of new procedures and reports. He supplied the clerk with his list of 15 demands.

Predictably, Krakowski was outraged. He petitioned the 8th District Court of Appeals for a Writ of Prohibition to be issued against Stokes. The appellate court agreed, and issued the writ, releasing the clerk from the demands of the judge. Common Pleas Judge William F. Brown, a visiting judge from Coshocton, was assigned to hear the contempt case against Krakowski. In the proceedings, Stokes described his demeanor during the phone call, *"My tone was never loud, I didn't use profanity, and I didn't harass anybody."* Nonetheless, Brown dismissed the complaint, finding, *"This court finds that the judge's language was scurrilous and threatening."*[12]

After Brown's verdict was rendered, Stokes said in a prepared statement that he disagreed with the decision but stopped short of criticism for the judge. He vowed no appeal or personal reaction. In a letter to the editor of *The Plain Dealer*, Stokes took credit for creating an atmosphere of cooperation between the court and clerk. He vowed to *"correspond with Krakowski in an effort to resolve problems amicably."*[13]

That should have ended the affair but, it was revealed that while the above mentioned legal proceedings between Stokes and Krakowski were taking place, 2 employees in the clerk's office caught an unauthorized man inside the office. A police report of criminal trespassing was filed after the suspect was caught in an area where he would need to pass through 2 locked doors to gain access to the clerk offices.
Workers told the police that they investigated a noise in the 3rd floor criminal section at about 12:30 pm and found the strong scent of cologne near 2 inner offices. They discovered a man with a camera in an adjacent hall, asking if he had been inside these offices. He admitted that he had in fact been inside and that he had a key. He told the clerks his name was Fields, and that he was a deputy bailiff. With no more explanation, he exited the area. Court officials said a Carl Fields was a deputy bailiff in the evictions division of the court, an employee for 12 years. Fields had been seen recently taking pictures from outside the clerk's windows. Chief Referee Walter Russell identified Fields as a dedicated worker who often worked late on his own time, although he had no idea why Fields would enter those offices, even with a key. Thomas E. Day, Chief Bailiff, said Fields had a hobby of photography and frequently carried a camera. Earlier in the feud, Krakowski had ordered that no judges or bailiffs would be allowed in the clerk's office and that all business must be transacted over the counter. No one was allowed into the clerk's office without special permission officials said. All employees were instructed to inventory their desks and the office area for missing or tampered with items.

Walter Russell

Krakowski said the incident was an attempt to discredit him as clerk of courts. He said Stokes, as administrative judge, had control over Fields, and the 2 were seen talking privately several times during the hearing. *"I'm very concerned about this,"* Krakowski said, adding that Fields had no business entering the clerk's office for any reason. He indicated that he planned to ask Police Prosecutor Jose C. Feliciano to review the facts to determine if charges should be filed.[14]

The judges fired another shot in the battle to rein in the activities of bail bondsmen. Many of the actions taken by the various generations of judges had proven, in the long run, to have made little impact. This particular skirmish was ignited by what some judges characterized as overzealousness on the part of some bond purveyors.

The complaints against bondsmen for their actions have been lodged since the court opened in 1912. Changes in court practices have lessened the need for, and increased the pressure on the bondsmen. Observed Judge Adrine, *"Competition is getting a little tough. There has been some scrapping going on."*

This prompted the judges to hold a discussion in Judge Connally's courtroom where both sides could express their viewpoint. The goal was to mutually arrive at a code of conduct. Connally said, *"We would*

The judges of municipal court apparently had a fan that took his admiration to a new high. Portraits of then 13 city judges were stolen from a wall of the court's jury lounge on the 4th floor of the Justice Center. Classified as a Petty Theft, Jury Commissioner Beverly A. Johnson reported the theft value at $40. This was the second such theft of judicial portraits. Six weeks previous, the 5 photos in the lower tier of the display were stolen. This time the thief stood on a couch to reach them all. Judge Stokes said the thefts calls into question the security of the jury area in the northwest corner of the fourth floor.[15]

rather have them help police themselves." Adrine told the group it would be in their best interest to help develop the rules of conduct. Their lack of input might result in *"some regulations they might not be able to deal with."*

The court hired 13 Deputy Bailiffs to assist in courtroom security and serve arrest warrants and summonses. This hiring increased the number of uniformed bailiffs to 20, some of them armed. Previously, bailiffs dressed in civilian clothes and were identified only by a badge. Once the assignment of veteran Cleveland policemen, because of manpower reallocation in the police department, the duties of process serving had become another task for the Bailiff's Office. It was hoped that the uniformed presence in the courtrooms would quell the fights and other disturbances which had more frequently occurred in courtrooms.

Over the years, process serving, while still a part of police duties, nonetheless became a low priority as manpower dwindled. It was clear the court had to take action, with a backlog of more than 2,000 warrants - 200 in housing court alone – as of the first of this year.[16]

In 1986 the Probation Department completed a reorganization, allowing the department to allocate its resources in the most effective manner and resulting in a separation of its staff into two main units: Pre-Sentence Investigation and Case Load Supervision. Additionally, classification of probationers into high, medium and low risk supervision categories, the re-instituting of home visits, and an Early Release Program (for probationers whose good conduct warrants early termination of probation) were instituted at this time. Such programs were examples of the Probation Department's long history of providing high quality assistance to the Court in the administration of justice, as well as protecting and promoting the welfare and interests of the community.

During 1986 the Court expanded the use of micro-computers to include case-load supervision in Probation. Implementation of computers by the Probation Department increased its investigative and data gathering capacities. Participation in the Cuyahoga Regional Information System (CRIS), a repository for criminal justice data, also provided access to the Bureau of Criminal Identification, the Law Enforcement Automated Data System (LEADS), and the Bureau of Motor Vehicles.


Cleoford Forbes

The Court mourned the loss of its friend and distinguished Clerk of Court, Jerome F. Krakowski, who passed away on April 10, 1986. A life-long resident of Cleveland, Mr. Krakowski first came to the Cleveland Municipal Court in 1972 as personal bailiff to Judge Katalinas. When the Office of Clerk became vacant in 1977, Mr. Krakowski was unanimously name by the judges to assume this office. In 1979 he was elected to fill the unexpired term. Then, in 1981, he was re-elected to a full six-year term as Clerk. Following his death, the Court praised Mr. Krakowski as being *"an outstanding public servant during his entire career. His dedication and humanity exemplified the spirit of public service."*

The judges appointed Cleoford "Zeke" Forbes to succeed Krakowski as the Clerk of Court. For ten years, Forbes served as Administrative Assistant in the Clerk's Office and had served as personal bailiff to Judge Gaines.[17]

Although Zeke Forbes tenure as Clerk ended with an election loss in 1987, he nevertheless made a significant impact upon the office. As Clerk, he was instrumental in modernizing the criminal branch. This included the relocation of the Parking Violations Bureau

to the second floor which enabled the criminal branch to acquire additional office space. He also redesigned the filing system by purchasing moving filing units, and an upgradeable microfiche system which eliminated approximately 120 file cabinets. The microfiche system enabled the staff to film all documents on magnetic fiche storage media. Thus, when new documents were added to a file, the fiche could be updated, reviewed or a hard copy recreated in minutes.

1987 marked the 75th anniversary of the court. Attended by dignitaries from across the state and numerous past and present employees, a gala dinner was held in October at the Statler Hotel.

February 18, 1988 was the saddest of days when members of Cleveland Municipal Court arrived for work and heard the breaking news that one of their own had been slain overnight. Shortly after 10 pm, Alex Lesko Jr., an assistant in the Referees Department, was preparing to leave his second job at the parking structure at East 9th and Rockwell Avenue. Shot dead, the victim of a burglary, his 3 assailants were caught, and convicted.[18]

Judge Carl Stokes became embroiled in another feud, creating problems for Presiding/Administrative Judge Fleming. This time the object of his wrath was the Legal Aid Society. The seeds of this issue were sown in June, but matured in November.

This dispute began in Stokes' courtroom when Legal Aid lawyer Ramie Ann Reisman represented a prostitute who Stokes determined was not indigent and therefore not eligible for a taxpayer financed defense. In Stokes' opinion, the defendant, Donna Leisinger, was "the single most active prostitute in town."[19] After heated debate Stokes ordered Reisman not to appear in his court and sent a letter to the society's director, C. Lyonel Jones, saying that she should be "removed." Stokes actions triggered a series of meetings at which the Cleveland municipal judges, through a series of votes, attempted to cool a heated dispute between the court and the Legal Aid Society.

C. Lyonel Jones

The crux of the disagreement morphed from who could represent prostitutes before Stokes into whether Legal Aid should represent prostitutes and who determines indigency. Judges Stokes and Connally at an earlier meeting had proposed the revocation of Legal Aid's contract to represent the indigent in the court. Their suggestion was to replace Legal Aid with a for-profit law firm or the city's own lawyers. At one such meeting, Stokes pressed for a motion to consider bids from 2 law firms. *(He evidently had hedged his bet. He came to that meeting armed with bids from 2 firms who had close ties politically with several of the assembled judges)*

However, no other judge would second his motion. Eventually, cooler heads prevailed when the judges voted 8-2 not to try to break the Legal Aid contract. Stokes attempted to press the issue further up the political food chain by expressing his concerns in a letter to the mayor, George V. Voinovich. Wisely, the mayor decline to get entangled in someone else's morass.

In either case, that motion would not have borne fruit. Legal Aid, either using their own inside information or anticipating Stokes' next move, petitioned the 8th District Court of Appeals for a Writ of Prohibition. The appellate court sided with Legal Aid and issued a temporary order that instructed municipal court not to interfere with Legal Aid lawyer's right to practice in municipal court or interfere with the Legal Aid director in the society's operation. That decision by the appellate court should have ended the matter.[20]

Legal Aid continued to represent Leisinger which further vexed the volatile Judge Stokes. By August, the dispute had turned political, and went past the boiling point. The judge discovered that Reisman, a Republican candidate for the Clerk of Common Pleas Court, allowed Leisinger to try to sell tickets for a campaign fundraising dinner, to jail guards. There is no record as to the number of tickets Leisinger sold, but the mere idea infuriated Stokes. Again he fired off an indignant letter to Jones, calling Reisman's use of a client as a "*transgression of professional ethics*," and again asked for her removal and that she be kept out of his courtroom. The letter was countersigned by Judge Connally.[21]

However, Reisman appeared once again in Stokes' courtroom in October, and was promptly shown the door. Stokes cited Jones for contempt, scheduling a short date for a hearing on the charge. When Jones failed to appear in his court to respond to the charge, Stokes had Jones arrested. Jones rationale for his non-appearance was that he appealed the case on grounds that Stokes could not hear his own contempt case. This forced Judge Fleming to search for a judge to hear the case when all the municipal judges declined to conduct the hearing against Jones. Fleming turned to Common Pleas Court for the assignment of a judge. Common Pleas Presiding Judge Leo M. Spellacy directed the case to Judge James F. Hennessy of Berea Municipal Court.[22]

The story concluded in the ultimate no harm-no foul tradition when the appellate court finally issued a ruling on Jones' Writ of Prohibition in June of 1989. Stokes magnanimously agreed to drop the contempt charge against Jones in light of the rebuke from the Court of Appeals.[23] There were many who looked upon this incident as proof that Stokes intended to make a run at city hall by turning the fight against crime and prostitution as hot button issues.

After the demise of the Burrough's computer system, the Cleveland Law Department finalized a $2.5 million dollar contract for the hardware and software needed to computerize the city's entire criminal justice system, as well as the court's civil division. This system made use of a network of terminals using Wang hardware and software specifically written with this court in mind.

In May the court adopted a rule that reinforced a long standing ethical practice. The judges agreed to adopt as a local practice the prohibition on the alteration of sentences rendered by other judges. This decision was reached in response to the protest of Judge Larry Jones when he discovered that sentences he rendered had been modified by Judge Connally, breaking the long standing tradition.[24]

The court began a program which offered alternative sentences for certain less significant misdemeanors. These crimes initially would be limited to prostitution, drunken driving and drug related offenses. Among the alternative sentences available at the judge's discretion would be drug testing, rehabilitation and house arrest. This program responded to complaints about increased prostitution and drug use in some Cleveland wards.[25]

Chapter 9 1981- 1990 Which Way To The Neutral Corner?

1	The Cleveland Plain Dealer Historical Newspaper	March 22, 1981
2	The Cleveland Plain Dealer Historical Newspaper	December 18, 1981
3	The Cleveland Press	February 23, 1982
4	The Cleveland Plain Dealer Historical Newspaper	March 20, 1982
5	The Cleveland Plain Dealer Historical Newspaper	March 20, 1982
6	The Cleveland Plain Dealer Historical Newspaper	April 14, 1982
7	The Cleveland Plain Dealer Historical Newspaper	May 6, 1982
8	The Cleveland Plain Dealer Historical Newspaper	August 25, 1982
9	The Cleveland Plain Dealer Historical Newspaper	April 3, 1983
10	The Cleveland Plain Dealer Historical Newspaper	September 16, 1983
11	Annual Report, Cleveland Municipal Court	1984
12	The Cleveland Plain Dealer Historical Newspaper	June 21, 1984
13	The Cleveland Plain Dealer Historical Newspaper	July 22, 1984
14	The Cleveland Plain Dealer Historical Newspaper	June 4, 1984
15	The Cleveland Plain Dealer Historical Newspaper	April 11, 1985
16	The Cleveland Plain Dealer Historical Newspaper	February 3, 1985
17	The Cleveland Plain Dealer Historical Newspaper	April 12, 1986
18	The Cleveland Plain Dealer Historical Newspaper	March 23, 1988
19	New York Times	November 24, 1988
20	The Cleveland Plain Dealer Historical Newspaper	October 27, 1988
21	49 Ohio App. 3d 136 (1989) State Ex Rel. Jones v. Stokes	
22	The Cleveland Plain Dealer Historical Newspaper	November 3, 1988
23	The Cleveland Plain Dealer Historical Newspaper	June 10, 1989
24	The Cleveland Plain Dealer Historical Newspaper	May 27, 1989
25	The Cleveland Plain Dealer Historical Newspaper	January 19, 1990

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Walter Russell	Cleveland Municipal Court
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C. Lyonel Jones	Legal Aid Society

FBI PROBE : OPERATION CORKSCREW

On the morning of February 14, 1978, a squadron of law enforcement officers conducted a surprise raid on Cleveland Municipal Court. The invading force, with 50 agents of the FBI and members of the Cleveland police intelligence unit, were armed with subpoenas issued by a federal grand jury and search warrants supplied by Common Pleas Court. Thus began an inquisition, dubbed "Operation Corkscrew", which would ultimately cast suspicion over all municipal court personnel and foster a great deal of community gossip and rumor mongering. The FBI would eventually end the probe after an exhaustive examination that spanned 6 years and produced astonishingly few convictions. To the bureau, "Operation Corkscrew" would prove to be a major embarrassment.

Promptly at 9 a.m. the raid commenced just as court opened. While the bulk of the invaders were busy confiscating records within the Clerk's Office, those docket books needed for the days court sessions were used under guard by an FBI agent and a policeman, and were confiscated immediately after court. Judge Sara J. Harper conducted her court session with an FBI agent on her right and a policeman on her left. *"It was uncomfortable and unfortunate,"* she said. *"This is a court of law. That this kind of thing could happen is incredible. We're all subject to criticism, but this, I think, is unfair."*

Among the seized documents were more than 130 docket books from the clerk's office and at least 12 journal diaries from judges. This investigation was to probe allegations of case-fixing, and would involve the largest seizure of court records undertaken by the federal investigators to that date. In all, the records commandeered would involve over 300,000 entries.

Agent Czarnecki

Stanley S. Czarnecki, FBI agent-in-charge, confidently told the press that investigators already knew of 13 cases in which people paid between $100 and $2,500 to fix cases. This probe dated back to January 1975. Czarnecki was eager to explain the case-fixing operation. Fixes were arranged by persons the investigators referred to as "corridors" for their preferred place of business. The "corridors" acted as conduits between defendants and court personnel. After arranging a fix, the court worker would transfer the case from the assigned judge to another judge's docket. Entries were then made to dismiss the case. *"In one or more of these cases, the system's records reveal a finding of guilty on one date and then, on a subsequent date, a finding of the case being suspended,"* he said.

Czarnecki stated that a number of persons who had paid for fixes and at least 2 insiders were co-operating with the inquiry. The fixed cases range from simple traffic moving violations to drunk driving to vehicular homicide. The fixes varied from complete dismissals to drastic reductions in charges and sentences.

Edward Katalinas, Presiding Judge of municipal court, was angered by the disruption of court business. *"I don't see the significance of taking all of these records. They're interested in only a certain number of cases, yet they cleaned off the shelves. They even took our civil docket books. They had no business taking civil dockets and there is going to be some answering down the road. I really don't know if they know what the hell they are looking for."*

William Beyer

William D. Beyer, the U.S. Attorney who was coordinating the joint investigation along with County Prosecutor John T. Corrigan, made statements in the press to the effect that more than one judge was under suspicion, but his statements seemed purposely vague and he refused to elaborate. Corrigan's office concentrated on finding persons who paid police or court personnel for the case fixing. He said no charges would be filed against those who cooperate with investigators.[1] Observers were confidant this raid would lay open the secrets behind the benches of municipal court.

THE CATALYST

Few knew that the entire investigation stemmed from an automobile accident that occurred on the near east side of Cleveland a few months prior to the FBI incursion. Once the relevance of the accident was exposed, the media lost all interest in the accident itself, citing it only as the ignition point of the scandal that would fester within local law enforcement for most of the coming decade. Even now, nearly 4 decades later, the result of that accident still eludes us.

Edmund Pollard, 59, of 3289 East 143rd St., struck and killed a pedestrian, Daniel Sylvester at 11414 Union Avenue on October 18, 1977. The details as reported in several sources had Pollard driving to his job at Republic Steel. Pollard was cited at the time of the accident with a misdemeanor charge, and subpoenaed to appear in court October 20th. When he appeared in court he was caught by surprise when the charges against him were amended to felonies. He was facing vehicular homicide and driving while intoxicated charges. He was released on a $5,000 bond. He was in deep trouble but what happened next would divert attention from Pollard and his legal problems. Rose Pollard, Edmund's common law wife, contacted the FBI with a tale of being contacted by 2 individuals who offered to help with her husband's legal problems.[2]

ENTER THE FIXERS

Mrs. Pollard alleged that she received a series of 4 phone calls from Emmanuel Porter, a Cleveland Municipal Court Bailiff who told her *"things could be done"* if the right arrangements were made. Porter said he could arrange to have the charges against her husband *"fixed"* for the sum of $2,000.00. In a later call, she was told by a voice that identified himself as Moritz that for *"2 big ones"* the charges could be reduced or dropped. That voice belonged to Sgt. Richard Moritz of the Cleveland Police Department.

After Mrs. Pollard delivered her accusations, FBI agent and Police Intelligence officers developed a plan by which Mrs. Pollard would meet with Sgt. Moritz. This face to face encounter was intended to be outside of the Justice Center, but Moritz resisted meeting that way. Moritz insisted on meeting in his 2nd floor office within the accident investigation unit at police headquarters. In order to monitor the meeting, agents had Pollard wear a wire. During the meeting Pollard gave Moritz $1,000 in marked bills. When he asked for the additional $1,000, she said she wanted to see some results before paying more. Moments later agents converged on the office and Moritz was taken into custody. Almost simultaneously, Porter was taken into custody in his office adjacent to Courtroom 14-B in the Court Tower of the Justice Center. FBI spokesman Steve Gladis warned that agents were continuing their search for additional victims of such crimes and evidence to establish a pattern of racketeering. *"We are looking for additional victims,"* he said. *"We want to know who they are and we want to pursue the investigation."*

Agent Gladis

Traffic Commissioner Henry E. Doberstyn was shocked to hear of the accusation against Moritz. *"Up to now I have known Sgt. Moritz as a respected, competent, diligent officer,"* he said. *"I have to believe it is an isolated case. I can honestly say it is an isolated case."* Porter, a municipal court bailiff assigned to retired visiting Judge Theodore Williams, was described by the judge as a good bailiff and very honest.[3]

These 2 arrests caught court and police insiders by surprise. From the moment the FBI raided the court, it was impossible for Justice Center workers to avoid feeling the suspicion that spread like tentacles to every corner of the court. Many were convinced that the FBI had informants in every crucial office. Who was talking, who was a suspect, when were the next arrests, the daily rumors were rampant. And there were those around the Justice Center who were practitioners of the same service that got Porter and Moritz arrested. The prospect of these 2 on trial forced some long time courthouse figures to heed the wake-up call, prompting some unexpected retirements and a few emergency vacations.

Both Porter and Moritz were arraigned before Judge Lillian Burke and were released on personal bonds. Presiding Judge Edward F. Katalinas relieved Porter of all duties pending an internal investigation, while Safety Director James T. Carney upheld the suspension of Moritz in a hearing that lasted less than 2 minutes. Of the 2, Moritz had much greater problems for he faced several police departmental charges which included gross neglect of duty. He answered these with a similar not guilty plea.

The trial of Moritz and Porter began in March of 1978 in the Common Pleas Court of Judge Norman A. Fuerst. Pressing the case for the prosecution before the jury of 6 men and women was Assistant County Prosecutor Thomas J. Wagner. Moritz was represented by James S. Carnes; Porter by Everett A. Chandler.

To the prosecution, the case was clear-cut. Wagner had only to play for the jury the taped conversation between Mrs. Pollard and Sgt. Moritz which included the delivery of the $1,000 Pollard was asked to pay Moritz to reduce charges against her husband. Defense lawyers argued strenuously against the admission of the tape as evidence, but were overruled by Judge Fuerst. Carnes attempted to present Moritz as simply trying to obtain evidence to arrest Mrs. Pollard for attempting to bribe him. Chandler's strategy portrayed Porter, a 2 year member of Alcoholics Anonymous, as offering help to the Pollards, with no intention of soliciting or taking a bribe.[4]

On the afternoon of March 16th the jury began deliberations but Fuerst recessed for the day 2 hours later. On Friday March 17th, after more than 7 days of trial and 8 hours of deliberation spread over 2 days, the jury delivered their verdict, both guilty of bribery, a 3rd degree felony. Judge Fuerst delayed sentencing pending a report from the courts' probation department. Everett A. Chandler, Porter's attorney promised a swift appeal, saying *"The prosecution failed to present any evidence that tied my client directly to this conspiracy."* Moritz' lawyer, James S. Carnes said he would await the pre-sentence report from probation before planning any appeal.[5]

That probation report would delay sentencing until Monday May 8th, when Judge Fuerst would assign the defendants prison terms of 2 – 10 years. As expected both filed appeals which delayed the beginning of their sentences. On Thursday October 4th the 8th District Court of Appeals denied their appeals. The appellate panel said the evidence produced during the trial was *"sufficient to justify a finding that the defendant Porter, by his actions, aided and abetted Moritz in soliciting and accepting a bribe."*[6]

The defendants had their attorneys to thank for the continued appellate delays. Although nothing the lawyers did would keep them out of prison, it did delay their entry until October of 1980. However, their stay in stir was decidedly short. Judge Fuerst released both on shock probation just after the new year dawned. Moritz stepped out of incarceration after serving less than 90 days, citing as his justification that Moritz was convicted on *"one singular offense, one charge, one incident."* Fuerst released Porter on shock probation on Friday January 9th. Thomas J. Wagner, prosecuting attorney, said, *"For him to serve approximately 3 months is not sufficient time to say to this community that we will not tolerate such conduct on the part of our public officials."* Porter was released on the condition that he never again hold public office. He was also placed on 2 years' probation and was required to resume his volunteer work with Alcoholics Anonymous. In an op-ed piece appearing in *The Plain Dealer*, an editorial criticized Judge Fuerst for releasing Moritz early. The 20 year police veteran had served less than 90 days of the 2 – 10 year sentence. Their stance was that convictions of people who held a public trust deserved no leniency.[7]

THE INVESTIGATION CONTINUES

Many observers thought the end of Moritz and Porter affair would be the end of the inquiry too. But information developed due to the recorded conversations involving Moritz, Porter and Mrs. Pollard convinced both the FBI and the Cleveland Police Department that the defendants had been engaged in other case fixing activities. As a result, a joint investigation between them was begun.

Throughout this entire affair there was one thing that could be counted on above all others, and that was the FBI's insatiable appetite for headlines. They regularly conducted news conferences that announced useless details, and filled the front pages of the papers with articles chock full of unofficial speculation that was leaked by one of the investigators. When in early November of 1977 the FBI announced the creation of an organized crime target squad to concentrate on crimes involving public officials, gambling and loansharking, it should have tipped the court insiders that the Feds were coming. Indeed, their prime focus was to be the case fixing activities of Moritz and Porter.[8] FBI agent Patrick T. Laffey would transfer to Cleveland from headquarters in Washington to lead the special squad.

Appearing just days ahead of the Valentine's Day raid was a page 1 story in *The Plain Dealer* that revealed the continuing FBI probe of municipal court and police accident investigation unit. The investigation, coordinated by the Justice Department's Strike Force

Against Organized Crime, was to focus their efforts on at least 2 judges and as many as 30 police and court personnel. The examination was concentrating on moving violations and vehicular homicide cases, spanning across the last 5 years.

It was intimated that at least 1 high ranking employee within the Clerk's Office was a central figure in the investigation, acting as an informant. New Clerk Jerome Krakowski said he was unaware of any investigation of his office or the judges. John Garmone, Traffic Referee said, *"I would be absolutely surprised if there was any type of corruption going on. I know of nothing dishonest going on there. Cleveland's Traffic Court is as honorable as any organization can be."*

Administrative Judge Edward F. Katalinas and Traffic Commissioner Henry E. Doberstyn, who headed the Accident Investigation Unit, both said they were unaware of any investigation. Doberstyn still maintained that the Moritz/Porter incident was *"an isolated case."*[9]

Agent Floyd Clarke

But in his testimony before the U. S. House Of Representatives, Subcommittee on the Judiciary, Floyd I. Clarke, Deputy Assistant Director of the FBI Criminal Investigative Division claimed the FBI had an informant who confirmed having fixed other cases in Municipal Court. According to the informant, these fixes were arranged through contacts established with middlemen who operated in the corridors of the Justice Center. (The FBI adopted "corridor" as a code word for the fixers). According to the informant, these "corridors" operated with impunity within the Justice Center Court Tower, acting as though it were their office. The informant also identified two defense attorneys used by the informant's "corridor" contacts to fix cases. [10]

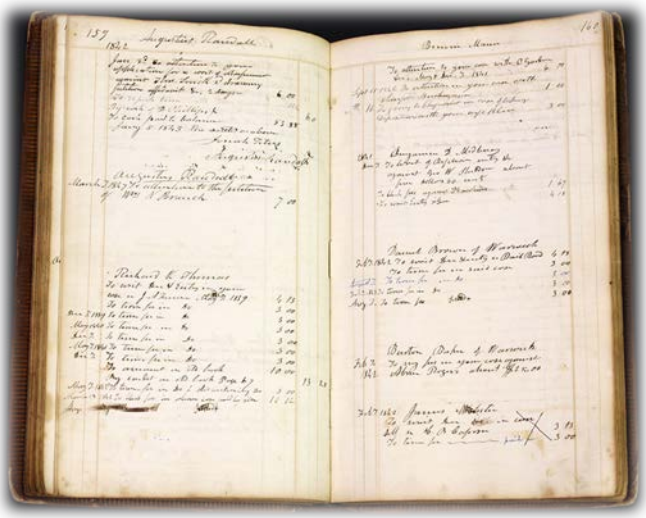
While the FBI worked their side of the "corridors", the Cleveland police were working their side as well. They had developed their own informant who, although he refused to wear a recording device did agree to be wired for sound, which allowed officers to monitor the fixing conversations. However, the police had problems recording those conversations. Interference caused by the steel structure in the court tower was blamed for the poor quality of many of the taped conversations. No doubt, a contributing factor was the budget conscious department that would probably not splurge for the best equipment of the day.

By late November 1977, the police were confident their informant had successfully arranged the fixing of 5 cases. This helped to convince the FBI to combine their investigations into a joint venture. This was accompanied by a shift in investigative technique. Rather than providing the "corridor" with cases to be fixed, they relied on his customers to select the cases to be fixed. Each fixed case file was monitored discretely and each file showed a disposition identical to that which was requested by and paid for by the person seeking the fix.

In January 1978, the police informant finally agreed to wear recording equipment, which upgraded the quality of the recorded conversations. At this time, the informant reported that some of the "corridors" were planning to insert their agent into the Clerk's Office of the Municipal Court to destroy fixed case files. At no time during the fixing of these cases did the informant have any direct case fixing dealings with any judge or referee assigned to the court. He only dealt with other "corridors." While investigators concentrated on developing the police informant, three other case shoppers were identified trying to manipulate an assault, narcotics,

and three traffic cases. They admitted paying a "corridor", one who had been used by the police informant. Unfortunately, it was at this time that the informant's cover was blown and was lost to the investigation. Because of the loss of that informant, investigators and prosecutors held a series of meetings to decide the future course of the investigation. While they were worried the blown cover of the informant would tip the fixers to the inquiry, their major concern was the threatened destruction of court records pertaining to the already fixed cases. The consensus among the investigators was that they could not delay obtaining these specific court records. To that end, those familiar with case fixing schemes and the record keeping system used by the court identified the types of entries on court records which might indicate case fixing. Undoubtedly influenced by rumors of alleged case fixing in municipal court dating back before 1975, some investigators were recommending a deeper look into the court records.

The dilemma for investigators was how to procure the court records without risking their disappearance, alteration or destruction. They knew a voluntary surrender of the documents was unlikely and a subpoena would tip the fixers to exactly what records they were after, increasing the chances of their destruction. That left the use of a search warrant, carefully prepared and duly signed, which could remain anonymous until presented for action. But what records should they procure?



The investigators knew that case files in the court from just the period of 1975 to 1978 would number in the thousands, so seizing thousands of case files before narrowing the scope of the investigation would have been a colossal blunder. But they also knew that a review of the docket books would allow them to identify case files they could subpoena for further examination. Further, they were aware seizing only the docket books would serve as a warning to the fixers, who if they kept records, would know which case files to alter or destroy. They were certain the seized docket books would provide some documented information to pursue the investigation should the fixers indeed have the ability to destroy any case files.

The search warrant affidavit was prepared and presented to a federal judge by an FBI agent, accompanied by Acting United States Attorney William Bever and Assistant United States Attorney Herbert Berkowitz. The warrant sought to seize records in the Clerk's Office and relevant records in the possession of the judges and/or their immediate staffs. Although the federal judge signed the warrant, upon further reflection he objected to its use to seize records in possession of judges. He then withdrew his authorization. Because this was a joint venture, the investigators approached Cuyahoga County Prosecutor John T. Corrigan for the second search warrant covering those records in judges' possession. That warrant was obtained from the Chief Judge of Common Pleas Court.[11]

They planned to present the warrants just before the 9 am opening of the court. This time was preferred because it increased the probability that the persons in possession of, or with access to, the court records including named judges would be present to assist in producing the

records. It was hoped that through their cooperation, the intrusion could be minimized and eliminate the necessity for the investigators to search the chambers of named judges in their absence.

THE RAID

The combined force of FBI and Cleveland Police were ready for business when the court opened that morning. Agent Clarke told the committee, *"During the search process, several judges stated they had no objection to turning over their records but expressed their desire to continue court that day to avoid inconvenience to defendants. Thus, in certain instances records necessary for hearings scheduled that date of the search were allowed to remain with the judges assigned to preside over those particular hearings. Agents or CPD officers remained in the courtrooms, on the "bench" behind the judge until the end of the court session. This would ensure a proper chain of custody over the records which had been seized. Records not immediately needed by the court for disposition pending the date of the search were immediately removed to the FBI office for photographing. The remaining records needed by the judges, remained with the judges until the end of the court session."*[12]

Valentine's Day at any courthouse in America is a busy time, with loads of couples assembled and ready to take the vows of matrimony. Representatives of print and broadcast media are guaranteed to be on-hand to file their "feel-good" stories. Many inside the courthouse were convinced this date for the raid was not coincidence, but chosen strategically, to maximize the media coverage of the raid. Of course, the raiding party made no attempt to exclude the media from the invasion zone. This, an "impromptu" news conference and the carefully crafted press release were certain to center the court in the spotlight of public scorn. Like all well sculpted press releases, including a denial will insure the reader's attention to the point of the denial. So the release concluded with:

> *"Due to the sheer magnitude of the actions taken this morning, wherein state search warrants and Federal grand jury subpoenas were issued on various books and records of the Cleveland Municipal Court system, this press conference has been called. It is our intention to dispel as much as possible any unwarranted speculation relative to this matter. The issuance of this warrant and subpoenas are an investigative step at this point. It is not our intention, nor should these actions be construed, to impugn the reputation of any judge, bailiff, referee or clerk within the Municipal Court system. To do so would be totally incorrect."*[13]

Simple. Effective. They knew the release would focus media attention on the judges, bailiffs, referees and clerks of the court.

When the evening edition of *The Cleveland Press* hit the street, it contained an article which claimed the FBI had confessions of fixers and their customers admitting payments. It went on to infer that there was already proof that seized court books and records had been altered. Furthermore, the investigation would now expand to include 14 present judges, 1 retired judge working as a visiting judge and 3 former judges.[14] So much for dispelling unwarranted speculation and impugning reputations.

The next day Judge Katalinas denounced the methods of the FBI and police intelligence as "*shotgun blast tactics*" in the aftermath of the raid. *"Those books contained more than 300,000 cases. According to the warrant, they are investigating 13 cases. I would call that overzealous shotgun tactics. If the seizure of those books proves unnecessary, someone is going to answer for it."* Katalinas said his outrage was shared by the other municipal court judges. *"I*

ask you how you think a judge is going to react when a litigant comes into court and tells the judge the police seized everything he had whether it pertained to the case or not?" The judge added, *"Nothing like this has ever happened anywhere in the country as far as I know. It's important to understand that the whole system of justice is not being investigated, only some isolated cases."*[15]

Now the investigative grunt work began. Those familiar with fixing schemes and record keeping at the court identified more than 23 types of entries on court records which could suggest case fixing. They had to compare entries in the 131 seized docket books for language consistent with those cases which their informants had already fixed. Agent Clarke discussed these issues in his appearance before the subcommittee:

> *"The review of the records seized and subsequent interviews which were conducted pursuant to the record review lasted until December 1978. Using the established criteria to review the docket books and journals, about 3,000 cases were identified which might have been fixed. The Clerk's office was asked to provide the case files on those 3,000 cases but only 2,000 case files were located. None of the original 13 cases caused to be fixed by the CPD informant were located. In subsequent interviews some defendants admitted paying to fix cases and identified the "corridor" that he/she paid. In others, the defendant admitted paying to fix the case but declined to identify the "corridor." In still others, the defendant refused to be interviewed or denied paying to fix the case, but the entries on the case files were identical to those entries on the files in which the defendant admitted the case had been fixed. It should be noted that during the interviews, no person admitted direct payment to a judge to fix a case. In those instances, where a defendant admitted making a payoff, each defendant stated he paid a "corridor" or a bagman. Thus by December 1978 there was substantial information suggesting widespread case fixing associated with cases before the Cleveland Municipal Court."*[16]

Prior to the revelations of the Moritz/Porter fixing and the February raid, the ability to arrange for a verdict was largely the subject of rumor and innuendo. The public may have had their suspicions, but proof of case rigging had always proven to be an elusive commodity. Before the opening of municipal court, accusations of fixing had been made against both Justices of the Peace and the judges of the old Police Court. Once municipal court had become established, accusations of fixing cropped up with regularity, specifically in 1926, 1928, 1930, 1931, 1932, 1936, 1938, 1954, 1962, and 1969.

Through the years there was little evidence unveiled which would lead to convictions. But the papers of the day were seldom held deterred by that lack, especially *The Cleveland Press.*

Just 2 days after the raid, the paper was able to convince one of the anonymous "corridors" of muni court to comment for public consumption his views of the justice system. In this "wide-ranging" interview this man claimed to have made arrangements for fixed cases in what he called a "wide-spread" system of judicial favoritism based on "gratitude and greenbacks." He claimed to be able to name 4 judges who were willing to accept bribes. He said:

> *"Don't tell me for a minute that you think there's a single policeman, politician, bailbondsman, or newspaper reporter who hasn't at one time or another asked a court for something. It's a matter of fact. A way of life. If you know the judge real good, chances are he'll do what you want as a favor, hoping you'll be grateful and return the*

favor, maybe, someday. If you don't know him that well, you find out from his bailiff if he's approachable to go easy on your guy for a few bucks and some of them will say OK."[17]

It must have been a bold move on the part of this shady character to make such statements in the wake of one of the biggest raids in government history. But, since the identity of this "corridor" was never revealed, we'll never know if he was one of the FBI's valued insiders, or in reality, a concocted interview.

While examiners continued sifting through the court records for indications of tampering, others tried to continue the covert activity through those "corridors". Their efforts must have been hampered by the raid. Indubitably, the number of real corridor operators must have decreased once the investigation was revealed. It was certain that they would become much more cautious. It would not be business as usual anytime soon. Because of those factors, and the disappointing results gained so far through the use of the informants, it was decided to pursue this track with the use of undercover FBI agents. This would reduce the need for informants, but one of these anonymous moles had information that would push the investigation further. That information would, in the end, seal the fate of the entire inquiry.

Compounding the difficulty was the inevitable dissention among the investigators. Originally begun as a joint probe, the police were gradually phased out of the investigation in 1978 when the FBI feared that internal documents from the investigation were being leaked to Dennis J. Kucinich, then clerk of the court. They were concerned that Kucinich would publicize the information, and thus compromise the investigation, for the sake of winning an election. The police would return to the investigation in 1981.

This informant furnished the FBI with the most important tip of the operation. He identified Albert Hobson, a custodian at the Justice Center, as a "corridor" who was actively fixing cases. In April 1979, undercover agents paid Hobson $3,000 to fix a case. When Hobson was confronted by FBI agents, he quickly agreed to cooperate, and he was full of information. During interviews he boasted that he had fixed cases for years. He could and did provide names of persons he contacted for fixing, with details of the methods and contacts he used. He was equally certain his contacts had made direct payoffs to judges, although most of his transactions were with bailiffs. Investigators knew they had nabbed a key asset, but they also realized that without Hobson's cooperation, he was a certain dead end. However, Hobson agreed to wear a body recorder and a transmitter to enable the investigators to monitor his activities.

Initially authorized to fix only those cases brought to him by past contacts, he was later pressed to make arrangements for cases fed to him by his handlers, mostly old cases with outstanding warrants on minor criminal violations. The FBI hoped that by watching and documenting Hobson's activities and contacts, he would lead them to evidence of the direct judicial payoffs he was so confident had already taken place. It was when monitoring Hobson's activities that the FBI learned the identity of another deeply involved in case fixing activities. The latest fixer, and the most important figure to pop up on their radar, was municipal court bailiff Marvin Bray. It was Hobson's boasting which led the FBI to decide to use him to introduce an undercover agent to Marvin Bray. That zeal to continue expanding the probe ultimately doomed the probe to be the colossal failure it became.

MARVIN BRAY, PUPPETMASTER

Once caught in the fixing web, Hobson was quick to boast of his fixing accomplishments and contacts. His motive could have been arrogance, letting investigators know just what a big fish they had caught in their nets. Or it could have been ignorance, talking himself into a bigger

hole every time he opened his mouth. Or could he have been the sharpest mind of all? If it was his own tactic, he worked his game beautifully. Connecting the investigators to someone who actually had judicial access gave them fresh prey to chase. Ultimately Hobson was able to trade his co-operation for a dismissal of all charges against him.

Now investigators had to develop a scenario that would yield a cover story to an undercover agent and draw Bray deeper into the investigation. Included in the decision process were Prosecutor John T. Corrigan, the U.S. Attorney's Office and the FBI. After sifting through a number of proposed scripts, the scheme they settled on would have the agent represent himself as the head of a stolen car ring who needed an in-court connection to fix cases for his employees. They would use actual criminal cases to avoid testimony problems in court by any FBI Agent or cooperating person. Each of these old, pending criminal cases, had to be one in which a warrant had been issued by a judge. The use of actual cases guaranteed that anyone getting suspicious of the agent would be able to verify the existence of these cases.

With the backstory in place, Hobson played his part, introducing an undercover FBI agent, "Bob Graham", to Bray in March 1980. Their plan was to allow Bray to determine with whom and by what method to fix a case. His performance was predictably consistent. Each time the agent caused a case to be fixed, Bray was paid $300 to $500. After each payment, the files in the clerk's office relating to those cases were checked by investigators. Those records showed the exact dispositions requested by and paid for by the undercover agent. These trial balloons convinced the FBI that Bray's influence on case outcomes was genuine.

At this point Bray, was both cooperatively arranging for every case alteration, and probably unaware that he was digging himself ever deeper into the FBI's investigative clutches. However, the undercover agent, who had established himself around the Court Tower so well that no one questioned either his constant presence, nor his perpetually broken arm (where he concealed his recorder), had not managed to meet with any of Bray's higher contacts. The investigators were aiming higher, to get Bray to take them to the next level of conspirator. To accomplish this next step, "Bob Graham" was pushing Bray for an introduction to his contacts, to meet whoever was actually fixing the cases. Bray was understandably resistant. Initially perhaps he probably feared losing his income stream if he allowed this valued customer to sidestep his empty palm for one higher up the food chain. Later he was willing to change his mind, with some stipulations. He agreed to connect his undercover agent with judges provided there was no discussion of money during any meeting, and absolutely no direct payment of any kind to a judge. Bray's next move should have raised fears and suspicions among the investigators, but there was no mention made in Floyd Clarke's testimony. Bray cautioned them that after arranging the meeting with the judges, all future payments would now cost $3,000, be made to Bray only, and he would make the necessary disbursements. The investigators had to agree to Bray's demands if they had any hope that a meeting could take place.

Bray eventually satisfied the investigators insatiable appetite for a meet with a judge. In fact, "Bob Graham" was able to document 26 personal contacts with persons he believed to be judges, and one meeting with a criminal referee. These meetings began April 17, 1980 and continued through April 10, 1981, when the FBI ceased undercover investigation. Bray varied the locations and times, lunches at Juanita's Restaurant, for east side soul food, and at Pier W, the posh gold coast restaurant, and varied Justice Center offices he could count on to be empty when he needed them. With several successful meetings under his belt, Bray became even bolder, holding meetings in judge's private chambers, with one judge still wearing his judicial

robe. Bray probably thought the robe would lend a note of authenticity to his questionable practices.

Among those contacts, Agent "Bob Graham" documented 5 meetings with Judge Lillian Burke and 7 meetings with Judge Clarence Gaines, at 1 of which was with him enrobed in his otherwise empty courtroom. At these specific meetings, bribes were accepted and cases were fixed but closely following Bray's instructions, no payments were made directly to either judge.

In preparation for all these meetings, the investigators stressed to "Bob Graham" that every effort had to be made to insure the identification of a judge in order to confirm a case had been fixed as represented by Bray. They developed a checklist to insure a positive identification. First, if the meeting was in the judge's chambers, the agent was to look for pictures on the walls or desk to confirm that the contact person was a judge. Second, the agent was to use available third party identification, and third, the agent was to view the pictures of the judges located in the public area of the Justice Center to confirm that the person he met was a judge. At all times during these meetings, the agent's goal was to engage the judge in a topical conversation. It was hoped through this banter that the judge may utter some comment, an admission, confirmation, or denial, which would suggest or offer proof that a subject case had been handled by the judge.

Following these face to face meetings, the investigators began a complete review of all the evidence they had amassed in the case. At least at the onset of the review they must have been confidant that they had, in fact, a solid case against Judges Burke and Gaines. But, quite by accident during this review process, the investigation was set back to square 1 by a television news segment. It was while watching the late evening news that an FBI agent involved in the review process saw Judge Lillian Burke included in a segment. Imagine his surprise when he realized the judge his undercover agent met with, and bribed, was NOT the real Judge Lillian Burke. It was shortly thereafter that they discovered the Judge Gaines that they had bribed was also an imposter. These disclosures must have been a major shock to the entire team of investigators. In his testimony before the congressional inquiry, Agent Floyd I. Clarke characterized the review as an opportunity to determine the impact of the failure to properly identify each of the judges; and the failure of Bray to be truthful in his interviews. That characterization may have summed up the attitude in the aftermath of this stunning collapse, but it is safe to say there was no such calm re-evaluation on the day following the TV revelation. The FBI had invested hundreds of hours and spent thousands of dollars concocting a scheme that was destroyed by an undercover agent who was unable to identify the subjects of his sting. He was fooled by an imposter in his 30s posing as a 68 year old judge.

Nor were these meetings as filled with incriminating statements as the FBI would have preferred. Due to some ambiguous and poorly documented statements, agents transcribing these recorded conversations incorrectly submitted interpretations of guilt. These interpretations convinced some investigators to recommend indictments. Luckily, not enough agents were convinced and support for the indictments waned.

One of these misinterpretations caused the FBI to actually devise a plan to transfer stolen Cadillacs to judges. In 1 recorded meeting, "Bob Graham" expressed his willingness to arrange a good deal on a Cadillac for the judge. During the meeting they discussed an auto theft ring he claimed to be operating. During that meeting the judge placed an order for a blue Eldorado, to be delivered within 2 weeks. Although the meeting transcript gives no indication the judge knew or thought the car would be stolen, some agents were again convinced the meeting reflected guilt on the part of the judge. But a further reading of this conversation failed to make clear to the judge that the agent was dealing in stolen cars. In fact, the judge, during this conversation, asked

if he was with Central Cadillac, and asked for his business card. Not exactly how one would react to the offer of a bribe in the form of a stolen car.[18]

If at any time during the investigation Marvin Bray sensed he was dealing with the FBI, he was certain now that he was left to become the focus of the investigation. Was there any chance to rehabilitate him as a witness or conduit? Were there other steps which could be taken to salvage any part of the inquiry? The first step was extensive interviews with Bray to determine just how deceptive he had been. Through these interviews they learned their meetings with judges were all wasted effort. Despite his lack of candor and his recruitment of imposters, it was his incessant boasting about cases he'd rigged and judges he'd paid which convinced investigators and some agents that he could still be trusted to deliver a real judge fixing cases.

They decided upon a two prong attack. They first presented Bray with an opportunity to rehabilitate himself, sending him to a meeting wearing a recorder. They were certain he understood the gravity of his situation. But the ever resourceful bailiff still had a few tricks yet unused. Staying true to himself, Bray tried to continue his fraud, this time trying to involve Judge Edward Feighan into the scam. Feighan, like Burke and Gaines, was totally uninvolved. At this meeting in June 1981, Bray essentially tried to meet with himself. He attempted to fake the voice of Judge Feighan for the benefit of his tape recorder. Unfortunately for him, the agents saw right through this sham. When confronted, Bray's story of being too nervous to go through with the meeting fell on deaf ears. When sent back a second time, again wired for sound, and furnished with $2500 in bribery cash, Bray swore he met with Feighan in his chambers and claimed to have paid the judge the bribe. But corroboration was lacking due to a recorder malfunction.

Bray was to have one more chance to offer the bribe, this time at the judge's home. But he must have decided he was in too deep and without any explanation, stopped coming to work. He was terminated in September of 1981. In fact, he disappeared for the next ten days. Searching for him at all his old haunts, he was finally apprehended in suburban Detroit. While he was missing, investigators and the media opened up his concealed history enough to find themselves surprised by his convictions in Cuyahoga County and New Jersey for check forgery, larceny, and breaking and entering. When he was returned to Cleveland, his tale of fearing he was being set up by FBI or some unknown person found no believers.

Bray was finally worried by the legal implications of his fraudulent activities. He worried that the judges and bailiffs knew he was wired, and was worried there would be reprisals. In several succeeding interviews, Bray continued to alter his story. He submitted to five separate polygraph tests, but the results were inconclusive. The variations to his story proved one thing to the investigators beyond the shadow of doubt. They were now convinced he would willingly throw almost anyone else under the proverbial bus. Thus caught in the FBI web he had little left to do but scramble for cover. Bray's recording shenanigans were seen for what they were. His clumsy attempt to implicate Judge Feighan in a bribe using a questionable audio recording was his last try for incriminating audio. Privately, more than a few courthouse insiders were suspicious of the presentation of the Feighan tape to the FBI. Rumors flourished that it was Presiding Judge Edward Katalinas who convinced Bray to use the tape with the FBI in a hopeless attempt to furnish some positive results, however meager. That tape convinced 2 FBI agents to ambush Feighan in a Kamm's Corner parking lot, interrogating him in full public view. The agents gained no evidence from this harassment, but left the elderly jurist confused, embarrassed and agitated. Feighan's close associates willingly laid the blame for this fiasco at Katalinas' office door, convinced this confrontation was retaliation for a disagreement between them that

occurred earlier in the year. Shortly after the FBI ambush, Feighan was hospitalized and subsequently retired.

Bray's wavering had the opposite effect on the FBI's confidence in the identifications made by their own undercover agent. Robert Irwin, the agent who posed as "Bob Graham", returned to the Justice Center to witness each municipal court judge in their courtrooms, for the purpose of a positive identification. He learned he had never met two judges he believed he bribed, but he confirmed meeting five judges and a referee in the course of the investigation. When faced with this evidence, Bray finally admitted his schemes and revealed the identities of the imposters. It was Bailiff Marvin Harris who impersonated Judge Clarence Gaines and Beverly Smith in place of Judge Lillian Burke.

It was then the investigators implemented the second prong of their attack. Based on the positive identifications, subpoenas were issue for about 40 cases believed to have been affected by Bray. For the second time in 3 years, FBI agents confiscated records of Cleveland Municipal Court.[19] Although authorities were not talking about this latest group of cases to be seized, they did admit that about 35 additional cases were the subject of the latest confiscation. This subpoena covered all records regarding the disposition of these 35 cases. A second subpoena was served on the court reporter's office, demanding transcripts of the proceedings. Some files were missing, and some had dispositions identical to what was negotiated in the fix. Some dispositions were inconsistent with negotiations.

The investigative team was forced to re-appraise the effects of their efforts as measured by the results they had produced. Their trained undercover operative, who had spent more than a year patrolling the halls of justice, had produced no tangible evidence that any judge had a hand in fixing cases. The minimal evidence they discovered could only be used against the courthouse insider they had turned into informant, and the imposters he had introduced.

Putting their best spin on the evaluation, they determined that, considering the length of the investigation, and factoring in the credibility problems of the undercover operatives, and the need to resolve the investigation in a timely fashion, it was time to bring the probe to a quiet conclusion. Thus, in January 1982, the results of the entire investigation were furnished to the Cuyahoga County Prosecutors Office for its review and decisions regarding additional prosecutions for violations of local law.

The investigation which began with a highly publicized, strong-armed raid, carried on in full view of all available and co-operative media, ended with a private whimper of a 1 page press release on February 25, 1982, issued jointly by the FBI and the U. S. Attorney. An investigation that featured press conferences which in fact were nothing more than well scripted media events, ended with a 1 page release to the local media only. The end came without the customary blurbs from "sources close to the investigation."

As for the principals in the case, the FBI was willing to claim the credit for the convictions of Police Sergeant Richard Moritz and Bailiff Emmanuel Porter for bribery, although the Cleveland Police were greatly responsible for those convictions, which happened before the raid. Admitted case fixer Albert Hobson was granted immunity from all charges in exchange for his co-operation.

Marvin Bray was the only defendant to face federal charges and the only one to forego a trial for a plea. In U.S. District Court before Judge Julian A. Cook Jr., Bray's lawyer, Federal Public Defender Miriam L. Siefer, arguing for a lighter sentence, told the court that the Cleveland FBI investigation bordered on entrapment. *"Their involvement was not necessarily investigating an offense, but creating an offense."* After he was fired by municipal court, the

FBI arranged for his reinstatement with letters from doctors at the Cleveland Clinic and Veterans Hospital which indicated Bray had undergone psychiatric treatment. She reminded the court that while he was missing from his job, he had been placed in federal protective custody and moved from motel to motel for 5 months while he feared for his life. She insisted he had suffered mental anguish at the hands of federal agents.

Assistant U.S. Attorney Martin Reisig, argued against a lighter sentence for Bray. He maintained that Bray had lived fashionably off the FBI money he scammed. He contended that Bray told the FBI 4 different versions of events in municipal court. It was Bray who arranged for the judicial imposters, and converted the FBI cash to his own use. He reminded the court of his prior convictions for forgery and larceny, saying, *"Bray, based on his prior record and his activities here, shows himself to be a master hustler."*

Bray, in his own defense, said he was remorseful for his crimes and wished to remain in society to be an example for his children. But Judge Cook was unmoved, calling Bray a poor exemplar. *"Your activities certainly have presented a great deal of support to those who want to believe, based on real or imagined perceptions, that our judicial system is corrupt."* Bray was sentenced to 3 years in prison on 2 counts of attempted income tax evasion and embezzlement of public funds, the sentences to run concurrently. He was fined $2,500. Bray served his time at a federal prison in Terre Haute, Indiana, and when paroled, settled in Detroit.

The FBI recommended charges against Bailiff Marvin Harris and Betty Smith, for Grand Theft and Impersonation of State Official to Commit Grand Theft. As the two individuals who aided and abetted Bray by acting as stand-ins for the judges in his scheme, they too faced the wrath of the Cuyahoga County Prosecutor. The first to face a jury was Betty Smith. Her trip through the world of criminal justice became quite an odyssey.

Arrested on July 7, 1982, Betty Smith, the 53 year old mother of 10 faced 5 counts of impersonating a state officer and 1 count of grand theft. She posted $5,000 bond and was released. Her trial, in the courtroom of Judge Joseph McManamon would not begin until October 7th, when opening statements by defense council Jack Levin, assisted by his son Dennis and the prosecutor Robert V. Housel occupied the first day. Day 2 featured a delay caused by Judge Jean Murrell Capers. The jury of 11 women and 1 man were to view the 14th floor judges lounge in the Justice Center. This was the location of 1 of the alleged meetings between Smith and Robert Irwin, the undercover FBI agent. Capers refused to allow the jury access to the lounge, and it took a court order from Judge McManamon to convince her to change her mind. Her recalcitrance was simply a demonstration of the municipal judges continued anger with the FBI and the bribery probe.

Agent Irwin, who posed as "Bob Graham" during the investigation, testified about his volunteering to be the FBI's undercover agent. Taking the jury through his meetings with Marvin Bray, he recalled his first meeting with Bray and the woman he came to know as Judge Burke at Pier W restaurant. The jury heard tapes of some of these recorded meetings.

When testifying in her defense, Smith said she believed Bray when he told her she was assisting the government in catching underworld figures who were trying to bribe judges. She was convinced by Marvin Bray she was impersonating Burke to help the government *"keep the Mafia from the judges."* Bray told her he was authorized by the government to pay her for her participation, $200 each time she impersonated Burke. Smith testified that the FBI threatened to arrest her if she did not implicate Judge Burke. She concluded her testimony with the allegation that in July, 1981, 2 agents came to her home. *"They told me that if I didn't tell them Judge Burke was involved and that Judge Burke used me as a decoy to keep Judge Burke clear, I would*

be arrested." Despite rigorous cross-examination, Housel was unable to shake Smith's composure or get her to alter her testimony in the least. Despite Smith's narrative describing the FBI threats to her, FBI agent Al McGinty, one of the agents who came to her home, confirmed that the meeting took place but denied any threats were made. He characterized her claims as complete fabrication.

When Smith's case went to the jury on October 15th, they were left to decide if Betty Smith was just a hard working mother of 10, a religious woman who was duped into believing she was aiding law enforcement. Or was she a willing co-conspirator in Marvin Bray's con game.

Smith was found guilty on 4 of 5 counts of impersonating a court officer. The jury could not reach a verdict on the charge of grand theft. Prosecutor Housel said he was satisfied with the verdict. When asked if the FBI's bungling of the inquiry hindered his case he was quick to dismiss the thought. *"It was totally irrelevant. This case dealt with this woman posing as a judge in order to dupe someone into paying her large sums of money."* Smith reacted with a mixture of disappointment and indignation, unconvinced she received a fair trial. *"Everything I told was the truth. I now realize I was naïve, gullible and a fool."* Smith's co-counsel Dennis P. Levin said their appeal would include charges of prosecutorial misconduct against Housel. His charge was that Housel dismissed 4 blacks from the jury just because they were black. The prosecutor scoffed at the charge saying, *"In my estimation there was no prosecutorial misconduct. The misconduct was the horrendous lie this woman told under oath."* Judge McManamon delayed sentencing until receiving a probation report.

On Tuesday, November 30th, Smith was sentenced to a prison term of 2 – 15 years. The ink on her conviction was barely dry by the time she was granted her release, pending appeal, on December 16th, after posting a $5,000 appeal bond. She managed to return to work for the Cuyahoga County Board of Mental Retardation where John M. McLaughlin, board personnel director said her $6 an hour job was routing buses from a board operated garage. He said, *"Obviously we're ashamed of what she did, but there is no indication that because of her action there would be any danger to any of our students or trainees. I look at this as what the role of the employer should be, and it might be to give her a second chance."* McLaughlin said she was never fired, but was considered to be on a temporary leave of absence.[20]

Like Betty Smith, Marvin Harris was arrested on July 7, 1982. Harris, 34, who faced 7 counts of impersonating a state officer and 1 count of grand theft, posted $10,000 in bond and was released. His trial would commence nearly 6 years to the day of the FBI raid. His trial would be a virtual carbon copy of the Smith trial.

This time in the courtroom of Common Pleas Judge James J. Sweeney, Assistant County Prosecutor William Gerstenslager and his second chair Bruce R. Rinker opposed Jack M. and Dennis P. Levin, the lawyers who defended Betty Smith. The opposing lawyers, much as they did in the Smith trial, spent a good deal of time in conference, antagonizing each other and the judge.

Jurors heard the FBI undercover tapes of the meetings where Harris posed as Judge Gaines. They heard the rehash of the bungled 4 year investigation and the testimony of Robert Irwin, the Cincinnati based agent who posed as "Bob Graham", the car thief trying to fix cases. On the stand, Irwin admitted he erred when he was fooled into believing he was bribing Gaines. Asked why he failed to check the identities of the judges his explanation was, *"I trusted Bray! He pulled a good con."* Irwin dismissed Harris' contention that he, like Smith was trying to

catch the bribers. *"I do not think Marvin Harris was honest about the entire thing. He was in it to make money."*

FBI agent McGinty told the jury that Harris admitted he assisted Bray in a scheme to bilk money from the undercover agent "Bob Graham." Harris initially denied knowing "Graham" but *"I informed him we had tapes and would be glad to replay them to refresh his memory. He then recalled he met Bob Graham at Captain Frank's. He said it was his job to pose as Gaines to help Bray run a con on a white guy known as Bob."* (Captain Frank's - a restaurant once located at the end of the East 9th Street pier) According to McGinty, Harris admitted he knew he was involved in a crime and was aware of all the money Bray was getting from Graham.[21]

During the Harris trial, a camera crew from the CBS news program "60 Minutes" arrived in Cleveland to film for a segment focusing on botched FBI investigations. They had set up cameras in the court, hoping to use footage of the Harris trial. But Judge Sweeney ordered the cameras removed when he learned of an altercation between Assistant County Prosecutor Robert V. Housel and defense attorney Dennis P. Levin. The animosity between the 2 stemmed back to the Betty Smith trial. It was unclear why Housel, who was not involved in the Harris trial, was as Levin put it, lurking outside the courtroom. The hostility between Housel and the younger Levin, nothing more than verbal jousting during the Smith trial, escalated during the Harris trial. The combatants engaged in a loud shoving match outside the courtroom which required them to be separated by Common Pleas Judge Michael J. Corrigan.

Once the cameras were removed, tempers cooled and Sweeney reopened the trial. The next witness was Harris' wife Karen. She testified that agent McGinty told the Harrises that the FBI was only interested in information about judges involved in case fixing. *"All he wanted him (Harris) to do was give him a judge, he didn't want Marvin."* James Hardiman, a lawyer who once represented Harris testified that McGinty had made those same statements to Harris. He said McGinty had threatened to indict Harris if he did not cooperate. *"He told me 'We're after some judges in Cleveland Municipal Court'".* McGinty, as one would expect, had a different version. *"I told him (Hardiman) his client was not the target of the investigation and that if he chose to cooperate the FBI would make that cooperation known to the prosecutor's office."* Asked if he told Harris he wanted him to *"give us a judge"* McGinty replied emphatically, *"Absolutely not."*

Much like Betty Smith, Marvin Harris took the stand in his defense. Led through questioning by his attorney Jack M. Levin, he described a series of events just as Betty Smith did in her trial. Laying the blame squarely on the doorstep of Marvin Bray, he claimed to be trying to catch bribers, not bilk the FBI out of money. *"Bray told me not to discuss the case with anybody because everyone in Cleveland Municipal Court was under suspicion.*" Under the cross examination, Prosecutor Gertenslager asked repeatedly why Harris never told the FBI that he thought he was helping Bray and the investigation. He maintained he was afraid and felt threatened when Agent McGinty kept repeating *"Just give me a judge."* Harris claimed to tell him, *"I didn't have a judge to give him."*[23]

It took 6 days of deliberation for the Harris jury to decide he was guilty of one count of grand theft and taking a bribe while impersonating Judge Clarence Gaines. On March 8th, the jury of 10 women and 2 men found Harris not guilty of the remaining charges. Judge Sweeney delayed sentencing until March 22nd, when he sentenced Harris to the same 2 - 15 years period levied against Betty Smith. Harris, clutching a bible, told Judge Sweeney he would do it again under the same circumstances, reciting the line of defense he used unsuccessfully in his trial that ended in a conviction; he thought he was catching a crook who was trying to bribe a judge.

Sweeney was not moved by Harris' speech. *"I heard the evidence in this case and thought the jury was rather kind to you, frankly,"* said Sweeney.

The sentencing featured an angry exchange between the judge and defense attorney Dennis P. Levin. Levin claimed the judge told him he thought there were legal errors made during the trial that would win a reversal in an appellate court. That comment provoked Sweeney to reply, *"Mr. Levin, as you have done throughout the trial, you take things that I said and twist it to fit your own purposes. It's typical of the kind of behavior exemplified by you and your father and I resent it."* After Sweeney left the bench, Prosecutor Gerstenslager and Levin engaged in a shouting match which featured them allegedly questioning each other's abilities as lawyers. Harris began serving his sentence while he waited for the 8th District Court of Appeals to hear his case. In November 1983, that panel upheld his conviction.

Just one week later the same court reversed the conviction of Betty J. Smith. The appellate panel cited misconduct by Prosecutor Robert V. Housel. The court took exception to Housel's language in his closing arguments when he referred to evidence offered by the defense as *"lies", "garbage", "garbage lies", "a smokescreen", and a "well-rehearsed lie."* At one point Housel accused defense counsel of suborning perjury. *"No evidence was presented to substantiate these reckless accusations against the appellant and her counsel,"* their opinion stated.

The appellate court found the need to chastise defense lawyer Jack M. Levin, who tried the case with his son, Dennis P., as associate counsel, for his closing remarks. *"Regrettably neither counsel acted as officers of the court in flagrantly ignoring the rulings and admonitions of the trial judge during closing arguments,"* the opinion said. *"However, the obvious frustration of the prosecutor cannot serve as justification for his improper arguments amounting to prejudicial error."* Housel said he would not handle the retrial. *"I've said these kinds of things in final arguments before and have not been reversed, but in this situation, they didn't see it that way."* The decision sent the case back to Common Pleas Court for retrial. Smith remained free on bond.

The opinion was written by appellate Judges John V. Corrigan with August Pryatel concurring and Leo A. Jackson concurring in part. Jackson went a step further and argued that Smith should be acquitted in his separate opinion. He was extremely critical of the FBI when he wrote, *"There are many mystifying and suspicious circumstances surrounding the FBI investigation and the testimony of the FBI agents."*[24]

Before the case could be re-scheduled in Common Pleas Court, the Cuyahoga County Prosecutor appealed to the Ohio Supreme Court the 8th District Court of Appeals ruling which reversed Smith's conviction. The Prosecutor's Office sought to reinstate the original conviction of Common Pleas Court. But the high court was not moved to set aside the appellate finding. Almost 1 year after the appeals court ruling, they affirmed the ruling of the 8th District and ordered a new trial for Betty Smith.[25]

Smith's re-trial was set for March of 1985. She chose to forego a trial, instead entering a guilty plea. Judge Norman Fuerst sentenced Smith to 6 months in jail. Once again, an appeal was filed with the 8th District and once again, the appellate court overturned the conviction, ruling this time that the penalty of 6 months in jail was excessive. They reasoned that Judge Fuerst did not consider Smith's standing in the community and the fact that she was employed. Instead, in error, he took into consideration her first conviction, which was reversed. The case was again sent back to Fuerst for resentencing. After suitable re-consideration, Fuerst sentenced Smith to 2 years probation, and 100 hours of community service. Smith's lawyer, Dennis P.

Levin, spoke for his client. *"Betty is glad this whole thing is over. She still maintains she didn't have any criminal intent and was merely trying to help the court."* There was no further appeal. It took almost 4 years to bring an end to the case fixing convictions.

EPILOGUE

Understandably, the judges of Cleveland Municipal Court felt a sense of outrage at how all the aforementioned events unfolded. An investigation that began with bluster and swagger ended with whimpers and whispers. The meager convictions notwithstanding, the public was left to speculate on the guilt or innocence of each jurist and court employee. Many called for an apologetic statement from the investigators, by either the FBI or the U.S. Attorney:

"The FBI should issue a public statement exonerating Cleveland Municipal Court judges!"

"I think it's important that this cloud that's been on the court for 4 ½ years should be lifted."

"They ought to make an apology to the court. It was a pretty amateur operation."

"The whole court has had to suffer as a result of this black eye."[26]

However, no federal official offered any hint of apology or made any statements that even implied the innocence of the judges and employees of the municipal court. After 4 years of threatening press releases and unsubstantiated press leaks, they folded their tent and ran with their tail between their legs. U.S. Attorney James R. Williams said the reactions *"were expected, but our involvement in a public debate would serve no purpose."*[27]

With but 1 federal conviction to show for it, the 4 year investigation closed. Like the apology, the Justice Department skipped any financial accounting when they issued their closing statements. Marvin Bray was given money to use as bribes but figures varied widely, from more than $37,000 to as much as $85,000. While it was acknowledged that he converted at least $2,500 to his personal use and failed to report the money as taxable income, neither the FBI nor U.S. Attorney James R. Williams could, or would say what happened to the rest.

The judges and employees of Cleveland Municipal Court were left with little recourse. Attempting to clear the court and themselves of the stigma left by Operation Corkscrew, 3 judges filed suits against the investigators. Judges Lillian Burke, Clarence Gaines and Charles Fleming each sought to have their day in court. However, each suit was dismissed prior to any trial.

The United States House of Representatives, Judiciary Committee, Subcommittee on Civil and Constitutional Rights, led by Rep. Don Edwards, D-CA, conducted hearings in 1984 to investigate what Edwards called, "*a rather extraordinary series of events*." They sought to establish how closely the FBI monitored and controlled the Cleveland operation. Judges Charles Fleming, Theodore Williams, Lillian Burke and former Municipal Judge Sara Harper traveled to Washington D.C. to testify before a House subcommittee reviewing FBI undercover techniques. Judge Gaines in declining an invitation from Rep. Louis Stokes, D-21, to appear said, *"If I thought my going would help Congress curtail the extravagances of the FBI I would go. But I don't think that will happen."*[28]

Although the subcommittee examined a number of FBI undercover operations, they placed special emphasis on the Cleveland investigation. Their report noted that agents opened the investigation without reasonable suspicion of case-fixing, then became *"blinded by the prospects of snaring big fish"* and proceeding despite *"glaring inconsistencies in the evidence."* The investigation was described as a *"textbook example of the danger inherent in undercover operations."*

The Justice Department was unable to conceal from Congress the main point that placed them and their investigation under the federal microscope. That was the financial accounting of the investigation that both the FBI and the U.S. Attorney glossed over when the probe came to its inglorious end. Under the hot lights of the congressional inquiry, they were forced to reveal that Operation Corkscrew cost more than $600,000 in agent salaries alone. Unfortunately, a complete accounting was not forthcoming but the total cost, including the embezzlement figures would easily exceed $1,000,000.

The report depicted Operation Corkscrew as *"demonstrating an utter failure on the part of the bureau to do even rudimentary checking of Bray's credibility or to seek confirmation of his assertions, even in the face of mounting evidence of his duplicity."* Citing a serious lack of review of cases the FBI believed were fixed, the report continued, *"If the FBI had reviewed the files and other court documents at the time of the operation, they would have stumbled upon a wealth of information indicative of the fact that there were often no case-fixes."* The report concluded, *"A group of respected citizens were singled out for investigation, targeted for criminal offers, and nearly prosecuted, without any credible evidence or other indication that they were involved in criminal activity."*[29]

Operation Corkscrew was a miserable failure, and it failed for a number of reasons. Perhaps the most incredible reason, and the one those who remember the probe recall the best, was the faulty identification of Judge Clarence Gaines. At the time of the investigation, Marvin Harris, convicted of impersonating Judge Gaines, was 34. The judge was 68, and his photo was prominently displayed in the Justice Center, yet undercover agent Robert Irwin, a visitor to the building almost daily for an entire year, was unable to tell them apart. This fact has stunned and puzzled analysts since Operation Corkscrew was closed.

The FBI conducted an administrative inquiry into the handling of the Corkscrew case by Cleveland FBI personnel during the summer of 1983. As a result of that inquiry, 5 agents were the victims of disciplinary actions. Among those agents was Joseph Griffin, Special Agent in Charge of the Cleveland office since February 1981. He was recalled to Washington D.C. headquarters for re-assignment. Also singled out for administrative action, but unnamed, were an Assistant Special Agent in Charge, an Agent Supervisor, a Case Agent and the Undercover Agent, whom we presume is Agent Robert Irwin.[30] It is quite a surprise that ramifications were few. Irwin's mistakes will remain as the signature error in any examination of Operation Corkscrew. But it was not the only mistake, and any assumption that he be held as the scapegoat is blatantly unfair. Perhaps the most egregious error was assuming that the case fixing was sufficiently rampant to go all the way up the court flowchart to the judicial level.

Judge Gaines was the public figure whose image took the biggest hit in the aftermath of Operation Corkscrew. Although he was embittered by the actions of the FBI because of and after the probe, that was not always the case. He initially welcomed the FBI examining alleged case-fixing. *"When they came here that morning, I welcomed them. If there was wrongdoing, it should be found. If there was no wrongdoing, it too should be told. If there is any place in the world that people should be certain that nothing influences any decision but what is right, it ought to be in court."*

Despite the effect on his reputation the implications of the probe left behind, Judge Gaines was able to bring a touch of humor to the witness chair when he was sworn prior to testifying at the Harris trial. When asked to state his name for the record, the judge replied, *"Judge Clarence L. Gaines, the real Clarence L. Gaines."*[31]

Operation Corkscrew

1	The Cleveland Plain Dealer Historical Newspaper	February 15, 1978
2	The Cleveland Plain Dealer Historical Newspaper	October 20, 1977
3	The Cleveland Plain Dealer Historical Newspaper	November 3, 1977
4	The Cleveland Plain Dealer Historical Newspaper	March 9, 1978
5	The Cleveland Plain Dealer Historical Newspaper	March 18, 1978
6	The Cleveland Plain Dealer Historical Newspaper	October 5, 1979
7	The Cleveland Plain Dealer Historical Newspaper	January 10, 1981
8	The Cleveland Plain Dealer Historical Newspaper	November 8, 1977
9	The Cleveland Plain Dealer Historical Newspaper	February 8, 1978
10	Testimony of Floyd I. Clarke, FBI Assistant Director Judiciary Subcommittee, US House Of Representatives	November 17, 1983
11	Clarke testimony	
12	Clarke testimony	
13	Clarke testimony	
14	Cleveland Press Archive - Cleveland State University	February 14, 1978
15	Cleveland Press Archive - Cleveland State University	February 15, 1978
16	Clarke testimony	
17	Cleveland Press Archive - Cleveland State University	February 16, 1978
18	The Cleveland Plain Dealer Historical Newspaper	May 6, 1984
19	The Cleveland Plain Dealer Historical Newspaper	September 2, 1981
20	The Cleveland Plain Dealer Historical Newspaper	January 26, 1983
21	The Cleveland Plain Dealer Historical Newspaper	February 17, 1983
22	The Cleveland Plain Dealer Historical Newspaper	February 18, 1983
23	The Cleveland Plain Dealer Historical Newspaper	February 19, 1983
24	The Cleveland Plain Dealer Historical Newspaper	November 18, 1983
25	The Cleveland Plain Dealer Historical Newspaper	November 8, 1984
26	The Cleveland Plain Dealer Historical Newspaper	February 26, 1982
27	Cleveland Press Archive - Cleveland State University	February 27, 1982
28	The Cleveland Plain Dealer Historical Newspaper	February 24, 1983
29	The Cleveland Plain Dealer Historical Newspaper	May 2, 1984
30	The Cleveland Plain Dealer Historical Newspaper	November 18, 1983
31	The Cleveland Plain Dealer Historical Newspaper	March 13, 1983

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