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From the Trenches: Narrative of an Assistant Public Defender

*C. D. Rodatore**

The Thief, The Prostitute, and the Heroin Addict

We all had to share one phone: the judge, the state, and the defense. Once when I was telephoning my client, to learn why he wasn't in court, I rambled the sheriff. The court was a small room in the 7th District police station at 69th and Racine. Because it only had one lock-up, the sheriff would often have to handcuff the women to chairs next to the judge.

One day, handcuffed next to the judge were a thief, a heroin addict, and a prostitute. A husband and wife were there to testify against the thief, who had come into their store wearing a bus driver's uniform when she had purchased a second-hand stereo with a check for \$250. The check was bad, the uniform stolen, and she got charged with theft. Then she skipped court, and one and a half years later, she was back.

I took the husband and wife to the doorway of the court. I asked what had happened.

They told me.

"This happened some time ago," I said.

"Eighteen months," said the wife.

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"Do you remember her?" I asked.

"Sort of," said the husband.

"Which one is it?" I asked, pointing to the heroin addict, the thief, and the prostitute.

They looked next to the judge, where scowled the prostitute,

They looked next to the judge, where scowled the prostitute, slept the addict, squirmed the thief, all handcuffed to wooden chairs.

slept the addict, squirmed the thief, all handcuffed to wooden chairs. The husband and wife whispered to each other, then pointed, then whispered some more. Then the wife said, "It's her.". She pointed to the thief.

"Really?" I asked.

"Should we be talking to you?" asked the husband.

"Only if you want to."

"Perhaps you've said too much," said the husband to the wife.

They returned to their seats.

The court was humming along: one guy got thirty days for stealing a bicycle, another ten for breaking a window. I got appointed to some four or five cases which meant I had to talk to a half dozen people. By and by, I made my way to

the thief, the heroin addict, and the prostitute.

"Okay, ladies, this is what we're going to do." They were looking at me in a bland, mildly curious way. "We're going to help this nice lady out," and I tapped the knee of the thief.

The heroin addict yawned and went back to sleep.

"What's in it for me?" asked the prostitute.

"Helping a friend."

"She's not my friend."

"I'll help you next."

"Promise?"

"Has a man ever lied to you?"

"Yeah, right."

I told her, "I want you to look at those people in the second row. Okay, now nod your head. Now shake your head. Nod it again. I'll be back in a bit."

I asked the prosecutor about a hubcap thief. Talked to a mother about her son. Talked to one or two trespassers before returning to the prostitute, the thief, and the heroin addict. The storeowners strained their eyeballs as they turned their heads first one way and then the next.

"What're you gonna do for me?" demanded the prostitute.

"Quiet for a second. Now, look at the people. Nod your head. Shake your head. I'll be back."

"Hey you . . ."

I talked to more people,

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appeared before the judge, filed a motion, pled a shoplifter, and then approached the storeowners.

"Pssst!" I whispered. "Let me see the check."

The husband handed me the check. I held it to the light. I returned the check, and then filed another motion, pled another shoplifter, before taking a yellow legal pad up to the prostitute.

"Sign your name," I told her.

"What?" She shifted around a bit, then she signed the yellow pad. I held out the yellow pad and stared at the signature. I turned it one way and then the next. I held it up to the light. I marched straight up to the storeowners. "Hey, let me see that check again."

The husband pulled the check from his folder, but then the wife put her hand on his arm when it was only half exposed.

"Come on,

prostitute had signed her name.

"Eureka!" I said, but not too loudly, and then, smiling, handed the check back to the husband. I made a beeline for the prostitute and said with a smile and a thumbs-up, "Now look at me and smile." She snarled.

"Come on," I said.

"I'm sick of this," she said.

Then I went to the clerk and told her to call the case, which she did, and with file in hand up before the judge came the husband and wife. The sheriff stuck the key in the handcuff of the thief, but before she could turn it, I said, "Judge! Before the sheriff brings down the accused, I have something to say." The sheriff stopped and rolled her eyes.

"What are you talking about?" snapped the judge.

"I want a line-up. After all, the complaining witnesses

she wrote this check . . ."

"Who wrote the check? Look up here at these women. Do you know who wrote the check? Don't look at the State, look up here."

"It was her," he said, and pointed to the prostitute.

"One moment, judge," said the prosecutor. He was looking to the husband with the folder. "Are you sure?"

"Well, it looks like her."

"Bring her down!" I was shouting now.

"Can we pass the case . . ." said the prosecutor.

"State," said the judge. "Is that the right woman?"

"No judge."

"Do you have a motion?"

"Motion State S.O.L."

"Who's the one charged here? Okay, you!" said the judge to the thief. "The charges against you have been dropped. They'll release you from jail later this evening."

Within minutes, the husband and wife found themselves out in the hall beyond the courtroom. The prosecutor had said, "Oh well, I'm sorry . . . we'll get her next time . . . I gotta go." Out in the hallway, it was easy to hear the husband cursing me.

All in the Family

Some don't go to jail for cocaine. At least, not for more than a couple of hours. All she needed was a defense-just a basic argument and she would beat the case. She got arrested because she was fighting with her boyfriend in the back of a cab after a night of clubbing. They must have been really going at it, because the cab driver pulled over on North Lake Shore Drive and radioed for the police. A beat officer ordered the entangled

here."

"Counsel, I don't see . . ."

"But judge, identification is always an issue."

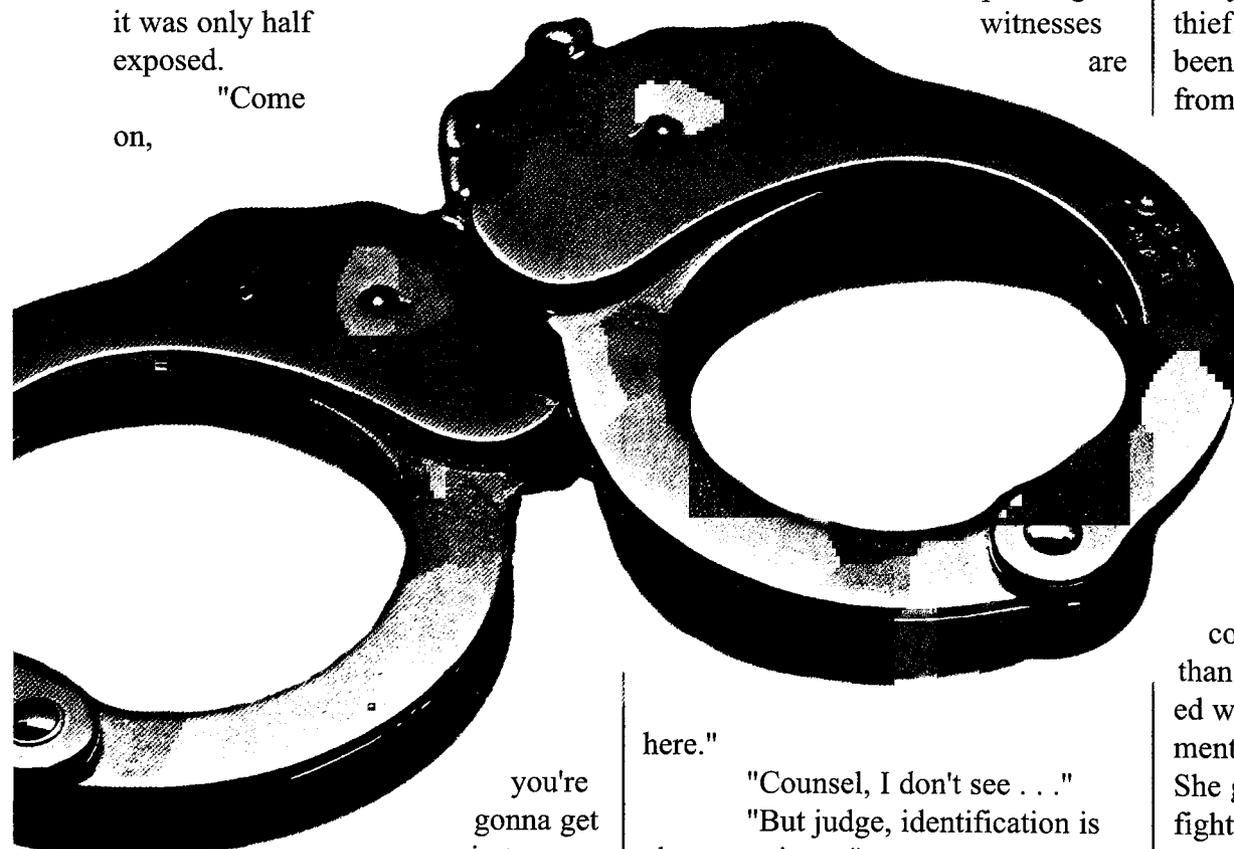
"Look, what's this case about?" He was looking at the husband with the folder. "Answer me, sir."

"Well, your Honor, see, um,

you're gonna get

me in trouble," I said, waggling my thumb toward the judge.

The hesitating husband finally handed me the check. I put it on my yellow pad next to where the



couple out. As she emerged, she tossed a bag of cocaine to the ground.

Because she was estranged from her family and living on unemployment, the judge appointed an assistant public defender, who pulled the old "hot potato" defense. She had been in his office where he had explained that possession required knowledge, which implied a willful act. And if, he went on, a companion-say, a boyfriend in a taxicab-saw the police coming and threw a bag of cocaine on a woman, and she in turn threw that cocaine to the ground, the law would not allow for a conviction.

"You got it?"

She got it.

"Now what happened the night you got arrested?"

Well, she got it.

The assistant public defender pulled a second defense. The judge's daughter had herself been in drug rehab. "Our family was able to pull together and do what we had to do," the judge had once confided. So now, his client's older sister would become a character witness. Do you know the accused? Yes. Do you know others who know the accused? Yes. Does she have a reputation in the commu-

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nity for drug use or non-drug use? But of course for non-drug use, and the judge would know that this upper-class family, like he had, would find the right rehab for their family member. They were, after all, very much

like him.

On a cold gray day in Chicago the defendant and her sister came down I-94 and, following the map, exited at California Avenue, then immediately locked their doors. They didn't feel any safer in the courthouse. Never had they been among such a concentration of people not like them.

The assistant public defender soothed them with his confidence. He said that the State was ready, the cop was here, and that theirs would be the third hearing he had that day. Third! thought the older sister, you mean our case isn't the only case you have today? She asked, "How long do you think we'll be here?"

"Perhaps all day."

"Can't we be first?" she asked, looking nervously around.

"It's not up to me."

He told the accused to wait in the courtroom, but the older sister could wait in a corridor outside the courtroom, if she preferred. She waited there, as the assistant public defender went to the other corner, where a family of people waited. She watched as the assistant public defender talked to that family for quite some time. He kept putting his hand on the shoulder of the mother who was crying. The family then shuffled into the courtroom. The mother was still crying.

The assistant public defender rejoined the older sister. He lit a cigarette under a sign that read "NO SMOKING!" She looked at the sign and asked, "Can you smoke in here?" He shrugged his shoulders. She took out one of her own cigarettes, and he lit it for her.

"I have a sentencing, and then a motion to suppress a statement, and then your sister's case." He blew a blast of smoke.

"My sister," she said, "is a really good person. She's just a little

mixed up right now, you know?"

"I understand," he replied, blowing another blast of smoke.

A whole stream of people began to exit the courtroom. The women were crying. The assistant public defender smoked his cigarette.

She looked nervously at the people now in the corridor with her. She asked, "How long have you been a public defender?"

"Eight years."

"Oh my, eight years."

"Yeah, eight years."

She watched as more people came out of the courtroom where soon she would testify in her sister's case. "I thought about law school," she said.

"You don't say?" mumbled the assistant public defender, looking at his watch.

"Oh yes, but you know! I could never be a public defender."

"Why not?"

"Because I couldn't do it."

"Do what?" he asked.

"I mean, how do you do it?"

"Do what?"

"All those guilty people."

She looked down the corridor. "How do you defend all those guilty people?"

The assistant public defender snuffed the butt on the floor. He was smiling, and he started to say something to her, but instead, he turned to go into the courtroom to do his three hearings.

The Big Chair

It seems the people waiting in the galley judge a trial lawyer's skill by how deftly he or she handles paper. With that in mind, I was always conscious of putting on a paper show, confidently throwing files about. Trouble arose as the day progressed because the judge appointed me to so many cases. Even the

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simplest case demanded that my fingers manipulate some dozen sheets of paper. To worsen matters, we did everything on our feet, and we had no place to put all those files. It got to where I could no longer handle all that paper with the dexterity that the watching public required.

The judge would demand, "What date do you want, Counsel?" and I would scramble to retrieve my set book, which might be on the floor, in a galley seat, or on the windowsill. "Counsel, I don't have all day."

The young prosecutor would watch calmly, leaning on the court table on his side of the courtroom.

I decided to get a desk. I concluded that getting a desk required nothing more than just snatching one from somewhere. Nobody knew what furniture Courtroom 106 contained on any given day but me. That's because traffic court judges rotated, as did clerks and prosecutors. The rotation system began in the mid-80's as a measure to rid the building of corruption. A commission had decided that judges, clerks, and prosecutors could fix cases if they worked too closely together.

"I don't like this at all," complained my friend. I told him I'd take the heat.

The desk weighed about a ton. My friend and I got it wedged in the doorway of the judge's chambers and the hallway. My friend wanted to leave it and get away before we got caught. I reminded him it was 8:30 at night and all those judges were surely off somewhere else. Besides, not only did judges rotate between courtrooms, but they also had a different chamber everyday. Every morning the judges strolled to the courthouse, robes flung over arms, name plaques in hands, to get their new rooms where they instantly started leveling fines. They conducted business in a different chamber every single day.

But now that office looked so empty that we got a workbench from the janitor's closet to fill it.

Word traveled fast, and jealousy followed. Fellow assistant public defenders would stand in the doorway of Courtroom 106 to witness the smoothest and surest impeachment of police officers anybody had ever seen. Their jealousy rose when they saw how neatly I had those police reports stacked on the giant desk. Because trial lawyers are a competitive breed, one by one each public defender got a table. Each simply slid the table from the prosecutor's side of the room to the defense side. A rotated young prosecutor with files and statute book in hand would come into his new courtroom to find a big empty space where his table once stood. The public defender would be neatly stacking papers.

"Hey! That's the property of the State!"

"Prove it."

Armed with desks and tables, we started arguing case law in court. We brought doctrines like lack of actual physical control, the Cummings defense, and many others for our defenses. I stayed late one evening and snatched a filing cabinet from another judge's chambers. I even started arguing cases from other jurisdictions! Some say it was my fault my friend ended up in lock-up. He was as competitive as a lawyer could be, so he got this giant leather chair and put it behind his desk in the front of his courtroom. Then he would sit in that chair while court was in session when he didn't want anybody to see him.

One day he pled a guy guilty to drunk driving the first time up. He pled the guy fast and sure and did not even bother trying to save his client's driving privileges. When the judge inquired as to why he agreed to a plea without an investigation, he respond-

ed, "Oh, um, my client simply wants to get the case over with." Turns out his client had killed a baby in the crash. The courtroom prosecutor, on his feet and shuffling papers, did not comprehend the seriousness of the case, while my friend, sunk into his chair, calmly noted the box on the police report checked "FATALITY." His quick plea prevented the State from indicting the defendant for reckless homicide. The press howled: "JUDGE SENTENCES DRUNK TO PROBATION FOR KILLING BABY!" They even printed the judge's picture.

The judge who took the plea happened to be the chief judge of traffic court. My friend simply disappeared into his chair when the chief judge was hunting him. Because he refused to come out, the chief judge had the sheriff remove both my friend and the chair. He only stayed in lock-up a few hours, but none of us ever saw that chair again.

The Glass Eye

We tried drunk driving cases standing up because to sit down took too much time. From all over Chicago all of the drunk drivers converged at 321 North LaSalle to have their day in court. The courtroom even smelled like alcohol, coffee too.

An old man wobbled on shaky legs before the judge. The cop had this shiny brass thing, designating that he patrolled between midnight and eight, while the court ordered that he testify between nine and five. No break for him.

The cop testified that the defendant's eyes had been red and glassy. The assistant public defender asked, "Because his eyes were red and glassy you arrested him for drunk driving?"

"Yeah," said the cop.

"Look at his eyes now,

Officer. Are they red and glassy?"

"I can't see them, Counsel."

"Sir," said the assistant public defender to his client. "Please give me your eye."

He popped it out. His attorney placed it on the podium directly in front of the judge. All the eyes of the courtroom focused on that lone eye perched on the podium, the sou-

All the eyes of the courtroom focused on that lone eye perched on the podium, the souvenir of a long-ago job accident.

venir of a long-ago job accident.

The assistant public defender asked, "Can you see it now, Officer?"

"Yeah."

"Well?"

The midnight officer removed his reading glasses from his shirt pocket. He perched them on his nose. He stooped forward, peered, straightened, and stepped back. He returned his reading glasses to his shirt pocket.

"Well?"

"Yeah, Counsel. It's red and glassy."

The judge would later tell a friend, "I forgot all the testimony and had to free him. And if that P.D. ever pulls another stunt in my courtroom, we're both going to the hospital-me for a heart attack, him to get my foot out from his behind."

A Jury of His Peers

One odd feature of drug court is that there are no victims waiting to have an injustice corrected. Nobody got robbed, rolled, jacked, insulted, or maligned by a neighbor now facing a judge to pay for his crime. They just wait in the galley for their turn to face the tribunal for their imprudent con-

sumption of a banned substance.

Most desperately hope to pay their debt to society on an installment plan.

A young man stood in the back. He had served his three year prison sentence-and he had served it two years ago-but he was still in the red. Five years ago, the court had sentenced him to those three years, followed by two years of probation. With monies owed for the lab that tested his powder and other court fees, he owed \$5,275. When the prison released him, instead of reporting to probation and setting up a payment plan, he simply went to his mother's house. The State caught him two years later while he was washing the dishes. They filed two new charges: failure to report and failure to pay fees. The State demanded that he serve three more years in prison.

I appealed to the judge. My position was as follows: enough is enough.

The judge asked, "Am I to just let him go, Mr. Assistant Public Defender?"

"Yes sir, your Honor."

"But you agree, do you not, that he has not paid the State their money, nor has he served his two years probation?" His eyes came at me.

"It seems that way sir, your Honor."

"Is that fair that we cancel his debt? Is that fair to the State?"

I stared at him a moment. Then I responded, "The State would not notice that we canceled his debt, sir."

"But what of those people, Counsel? Is it fair to all those people that this young man not pay for his crimes?"

I turned and looked to see some forty or so hopeful but worried cases in the courtroom. They noticed that I noticed them.

I turned and swept my arm

around, indicating all those people, and said, "Yes, your Honor. I wholly concur with your proposition. Yes, we shall ask the galley what we should do." I turned back to the judge. "Do you want to do it by hand vote, or should the sheriff pass out paper and pen?"

His eyes looked over my head to the forty, and I believe it was the first time he took in the forty as a group. After a time he said, "Well, Mr. Assistant Public Defender, I would do what you suggest. But my courtroom is not run by democracy." He turned to the young man, who hung his head low. "Listen here! I recommit you to probation. Set up a payment plan with the probation officer."

We had sixty more cases to slog through, but not before the judge took a long recess.

It's Greek to Me

Sandman sat in the jury box sliding his hand across the top of his bald head. He was thinking of dandelions. Thousands of the yellow crowned noxious weeds dotted his yard and he didn't know what to do about them. He would pull one up but because the root went deep another yellow crown would take its place. "You can't just yank 'em up and toss 'em in the garbage," he said to himself. "No sir. This here's a problem that requires a bit of thought."

"The prisoners are here," shouted Davis.

Sandman rose to his feet. "You got the mitts?" he asked.

"The who?" asked Davis.

"Not the who. The what. Them the who..." He pointed to the lockup cages behind the courtroom. "... these are the what. We call them 'the mitts'. It's the paper work. The mitts gotta match the bodies. What we got here? Okay! Fourteen men,

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three women, and one juvenile." Sandman handed the mitts back to Davis.

Davis leafed through the eighteen sheets of paper. "You don't call them orders?" Aren't these court orders?"

"Sure they're court orders. They're orders sending defendants back and forth from jail to court and from court to jail."

"Why don't you call them orders?" Asked Davis, pulling at the collar of his brand new uniform.

"How the hell do I know! We call 'em mitts. That's short for mitimus. I think its Latin for 'we send.'"

"We send?" Asked Davis.

"Yeah! We send. You know, like: 'We send you up the river.'"

Davis looked at the long row of bars on the cages of the lockup behind the court. How do you say "You're screwed!" in Latin?"

"Mitt to issue," responded Sandman.

"How about: "You're ass is nailed to the wall?"

"Mitt to issue."

How about: "this is 'cause you were born po'?"

"Mitt to issue."

"And black...?"

"Mitt to issue."

"And...."

"Shut up now, you hear, and give me those papers. Court's about to start."

Sandman took the mitts from Jones and walked them into the courtroom and handed them to the clerk just as the prosecutors walked in pushing their cart full of files. Sandman behind the courtroom to the lockup cages.

"Hey Sandman," came a small voice from the one, lone, dark cage that was separated from the others.

"Hey Malcome..." responded Sandman in an avuncular voice.

"They gonna send me home today?"

Sandman stared through the bars at the big, round, brown eyes of the fifteen year old boy. "Say what?" He said, cocking his head in a quizzical way.

"I been locked-up nine months, Sandman. I wanna go home."

"You talk to your lawyer?"

"Not for a while."

"What he say when you did talk to him?"

"Don't know. It's like he speaks another language or something."

"You got people here?"

"Nope."

"Where's your mamma"

"Malcome shrugged. There was a silence, and then Malcome asked: "Hey Sandman! What's gonna happen to me today?"

"You gotta talk to your lawyer, Malcome," responded Sandman as he turned away.

"Just tell me what I'm here for today, Sandman."

"You get sentenced today, Malcome."

"What's that mean?"

Just then the door that leads to the courtroom opened and Davis shouted. "Malcome Jones."

Compared with the dark corridors of the lockup the courtroom was bright and so Malcome emerged disoriented. Sandman led him to the bench to stand in between the prosecutor and the public defender.

The judge said: "Malcome Jones, you have been found guilty of possession of less than one gram of cocaine with intent to deliver within 1,000 feet of a church, school, or playground. The charge carries three to seven years in the Illinois Department of Corrections. There is no probation allowed for this charge. Because you were fifteen years old when you committed this offense, the

statute mandates that you be transferred to adult court. Do you understand what I'm saying?"

Malcome blinked. Because the courtroom was designed before the automatic transfer statute was enacted the bench was built too high for Malcome to see over it. He could not see the judge but only heard his big voice floating down from somewhere above him. He blinked again.

"Just say yes," whispered the public defender.

"Yes," said Malcome.

"Yes sir," whispered the public defender.

"Yes sir," said Malcome.

The judge continued: "I have read the pre-sentence report and I see that this is the first conviction for Malcome Jones.

"That's right, your honor," said the prosecutor.

"That's right, your honor," said the public defender.

"That's right, your honor," said Malcome.

The public defender elbowed Malcome, who turned his meaty head to the public defender and looked puzzled.

"Shush," said the public defender.

"In fact," continued the judge. "I see that this is Malcome's first arrest ever."

"That's right," said the prosecutor.

"That's right," said the public defender.

"That's right," said Malcome.

The public defender glared at Malcome.

Malcome lowered his eyes.

"Do you have anything to say before I sentence you?" Asked the judge.

Malcome kept his head lowered. The judge could barely see the tip top of Malcome's head, and so the judge stood up so that he could actu-