

INTERVIEW WITH THE HONOURABLE RAY STORTINI

For the *Diversifying the Bar: Lawyers Make History Project*

Law Society of Upper Canada

Interviewee: Honourable Ray Stortini (RS)

Interviewer: Allison Kirk-Montgomery (AKM), for The Law Society of Upper Canada. Mary Kay Stortini (MKS) present during part of the interview.

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Location: Home of Ray Stortini, Richards Landing, St. Joseph Island, near Sault Ste. Marie

Transcribed by Allison Kirk-Montgomery and Planet Shift Inc.

[Transcript has been edited by Allison Kirk-Montgomery and Ray Stortini to correct errors, and to remove false starts, etc. for improved clarity.]

AKM: My name is Allison Kirk-Montgomery and I'm here in Richards Landing, on St. Joseph Island at the home of the Honourable Ray Stortini, who has kindly agreed to be interviewed by me for the project of the Law Society of Upper Canada. It's name is *Diversifying the Bar, Lawyers Make History*. And I'm here with one of the history-making lawyers of Algoma District. So, Ray, we're going to start at the beginning, and the beginning for you was Sault Ste. Marie and the West End. Was it, or does it go further back?

RS: Well, my grandfather came in 1905 at the call of the Canadian government looking for immigrants to come to Canada. My grandfather came to

*Hon. Ray Stortini interview by Allison Kirk-Montgomery
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Sault Ste. Marie, Ontario, because there was an industrialist by the name of Francis Clergue who founded Lake Superior Iron Works in order to build rails for the Canadian Pacific Railway going out to B.C. My grandfather came in 1905, and then he sent for my father in 1910. My father was back and forth to Italy several times. He was involved in World War I in Europe, on the side of the Allies. After the war, he married my mother and came back to Canada a couple of times. In 1927, he sent for mother and my two brothers who were living in Italy. My mother and my two brothers arrived in Sault Ste. Marie in March of 1927. I was born two years later.

At that time, the area where my parents lived was a collection of Italian immigrants. It was known as Little Italy. It was the West End of Sault Ste. Marie. People there felt they were in a goldfish bowl and were very conscious of the way they behaved. I remember my father drilling into us that we should never disgrace the family name or the good name of the Italians. An incident happened in 1911 that really shocked the Italian community. Other incidents happened which our parents talked about, but they never talked about this case. I didn't know about this until later on when a movie was made about the incident.

In 1911, a lady by the name of Angelina Napolitano killed her husband. He was an abusive husband. Today, she would never have been convicted because of the battered wife syndrome [defence]. He was an alcohol abuser and came home one night and wanted her to prostitute herself to gain some money, because he was unemployed. She was pregnant at the time and had two other

children. He threatened to kill her and her children if she didn't go out and prostitute herself. Well, he went upstairs and fell asleep and she took an axe and killed him. She was convicted and sentenced to be hung. Because she was pregnant the judge ordered that she not be executed until the child was born. That gave time for the press to get involved. The Sault Ste. Marie, Michigan, newspaper carried the story and it ended up in the Chicago papers. A reporter from the *Chicago Tribune* came up and really was taken by the story and started a world-wide petition to save her life. They finally caught up with Sir Wilfred Laurier, Prime Minister of Canada, at a Commonwealth Conference in London. When he was made aware of the petition and the sentiments of people world-wide, he ordered that the sentence be commuted from death to life imprisonment. Our parents never talked about that incident because they were ashamed that a women had killed her husband.

In any event, the West End was a great place to be raised because you couldn't do anything wrong because people would tell your parents. They knew you. They'd say, "I'm going to tell your mother," if you didn't behave. It was like a collective village that raised the children. Everybody I know who lived through that era looks on it as an advantage. It was unusual and it was very fulfilling to be raised in that community.

I was the first born in Canada, in 1929. There is some talk by the present minister of immigration that people who can't speak either English or French should not be allowed to come to Canada. If that were the case, then my

grandfather, my parents, and my two brothers would never have been allowed to come to Canada. In one short generation, it all gets equalled out because my children cannot speak Italian. They are unilingual English. So I say to the minister, "Sir, be a little patient. Within one generation there will be no language problem." So that's how it all began for me.

AKM: Did you know your grandfather?

RS: No, I had no grandparents here. My maternal grandparents remained in Italy and my paternal grandfather went back to Italy prior to his death. I never met my maternal grandparents either. My closest relatives are in Italy and I've since visited them many, many, times, but I didn't know my grandparents.

AKM: And so you're the third in the family?

RS: Yes, I have two older brothers and one younger sister.

AKM: What do they do?

RS: Well, they're both dead now. My older brother, John, was a steel worker and very active in the union. He was right off the picket line, shop steward, trustee, very, very active in the union. My brother Len was involved in a family business with his in-laws in the furniture business and did very well.

AKM: In the Sault?

RS: In Sault Ste. Marie.

AKM: Do people call it "the Sault," by the way?

RS: Yes, they do, the Sault, and its often-spelled S-O-O rather than S-A-U-L-T. It's mispronounced. The falls, or rapids, gave it its first name. It was called "Sault de Gaston," after the brother of King Louis of France, by the first French explorers. After that it was changed by the missionaries to "Le Sault de Ste. Marie" after the Blessed Virgin. But the English pronunciation has changed over the years and "Sault" has now become "Soo" and everyone calls it "Soo Ste. Marie" and for short, "the Soo." The spelling has changed, not officially but colloquially, to S-O-O. Everybody knows where "the Soo" is.

AKM: Yes. The area that you grew up in, as you say was called Little Italy. Did you call it Little Italy?

RS: No, none of us called it Little Italy as it was referred to by the other people in town. We just called it the West End.

"Where'd you live?"

"I live in the West End." And everybody knew where that was.

AKM: And you lived on Rome Street?

RS: Rome Street was a little street almost like a little street in a small village in Italy. Very small lots, no driveways because no one had cars. The distance between each house was a walkway and they all had back lanes for removal of (they called it) "night soil" in the early days. Later on it was used for the delivery of coal and wood for the wood stoves. So it was a tight street and everybody knew everybody, of course.

AKM: Was it all Italian?

RS: Oh, 100 percent. Yes, the whole West End was 100%, because it was close to the steel plant where the men all worked and they all liked to live together. The main street, the business street was James Street, and it was just loaded with businesses. Every square inch was taken up by a business of one kind or another.

AKM: Italian businesses?

RS: Yes, Italian. My mother never learned to speak English very well because she did her shopping, did her business in the drugstore and the post office, where everyone spoke Italian at that time. My dad picked up English, of course, at the Steel plant.

AKM: So... did she feel like she was still living in Italy?

RS: Oh yes, there's no difference in that respect because it was an Italian neighbourhood.

AKM: Your comments about the goldfish bowl are interesting. Do you think that sense came very much from the Napolitano murder or do you think there are other reasons for that?

RS: It was there before that because at the time of the murder there was an editorial by the owner, editor and publisher of the *Sault Star*, the local newspaper, to the effect that, "What else can you expect from those hot-blooded Italians with their stilettos, lurking around the corners?"

It was really blasphemous and libellous but there were no protests. He was not run out of town. He was not criticised. There were no letters protesting that. It was just a common sentiment that these new people—people had their suspicions. I grew up in a completely Italian section and I'd never seen a stiletto in my whole life, I still haven't seen one.

AKM: Why don't your children speak Italian?

RS: Well, we probably got that from my parents. They did not insist on an Italian school. They were pushing for their kids to be allowed into the public schools. And that's where their energies went. When they finally got a public school in our neighbourhood, I attended it; there was McFadden Public School and St. Mary's Catholic School. They were really concerned with children getting an English education, and they didn't put much energy into finding Italian-speaking courses.

AKM: So if you hadn't gone to McFadden, where would you have gone?

RS: Probably to the Catholic school, St. Mary's School. It was located further away from our house but the main reason why my parents sent me to McFadden School was this: I was born in 1929 which, as you probably know, was the start of the Great Depression, and the separate school system was not funded as well as it is today by the province. The separate school system was supported by local taxes and the taxes for Catholics sending their kids to the Catholic school were much higher than for the public school supporters. My father was out of work for 6 years during the depression and every dollar counted

so it was strictly a financial decision for him to send me to McFadden Public School. As it turned out it was a boon for me, because I had one of the best teachers I've ever had in my whole life at McFadden school -- a lady by the name of Anna McCrea. There is a school in Sault Ste. Marie named after her, and quite properly, because she was an extraordinary person.

AKM: What do you think she did for you?

RS: Well, she did many things for a lot of people. She came there as principal in 1914, despite the fact that three years earlier there was this murder and she was warned about going to the "ghetto" but she had no fear. She was a gutsy woman and didn't have any problems. The people in our area just loved her. They would knit sweaters for her and she would visit their homes and have supper with them. She had no family of her own, she was never married but she considered the kids in her school her children. She was beloved. I can't put it any other way except to say she was beloved. During the depression, she would prevail on her friends who were working or wealthy and would send food boxes to certain families who we all knew were having a hard time in our area. She would pay for certain kids who could not otherwise have gone to summer camp. She would pay their way to our local summer camp in the area. I heard from one of my colleagues and peers that she bought the first pair of skates for our first NHL [National Hockey League] hockey player from Sault Ste. Marie, Donald Grosso. He was the first NHLer from this area. From what I hear, she bought the skates for him. There was a rink behind our school and she saw some talent

there and bought him these new skates. He went on to become a professional hockey player.

AKM: Exceptional. Did you know very many other men or women who were not Italian in those days, as a child?

RS: There was the odd family that would move in but it was exceptional and we got along with them; it was no problem. Further east from the West End or the little ghetto around the James Street area, there was a street near where the international bridge is now, called George Street. In that area, we had a lot of Polish people, Ukrainians and Russians. There was a grocery store. It was also a (and again I don't use the word pejoratively) ghetto.

I talked recently with a fellow my age that grew up there. He was saying that at one point they decided to close the school he was going to (which was further east, the King Edward School), and they drew different boundary lines for school attendance. He and his fellows were ordered to attend McFadden School. He was worried about going to the school with all those Italian boys and how he would be treated. However, he said he was treated with nothing but the best. He said he made good friends, life-long friends, and never had any trouble coming to our school. Gino Motluk was his name and I just saw him recently after many, many years and he recounted that story to me that he had some apprehension when he was first told he had to go to McFadden school. Once he got there those misapprehensions just evaporated.

AKM: So McFadden School was pretty well all Italian?

RS: Yes, almost entirely.

AKM: And the teachers, were there any Italian-Canadian teachers?

RS: No, not at that time no. The Italian professional people didn't come until a little later with the Greco family. There were two doctors in the Greco family. Mr. Anthony Vannini went to law school and then we had teachers coming and a dentist coming from that neighbourhood but at the time the school was built, there were no Italian teachers at the time.

AKM: You mentioned Mr. Vannini. Was he the first lawyer from the Italian community in the north here?

RS: Yes, yes he was. He was a very good lawyer in practice, and was appointed to replace our district court judge when our district court judge, Judge McDonald, retired. Judge Vannini had a very good reputation as a lawyer and was a very fine judge.

AKM: Did he come from the same area?

RS: Oh yes, same neighbourhood. His father was a fruit peddler, so he came from the same background that we all did. But our parents, most of them, saw that the way to any kind of success was through education. That's why the Vannini and Greco families produced doctors, dentists, teachers and nuns because their parents believed in education. Judge Vannini was encouraged as a boy to do well in school, which he did, and went on to become a lawyer.

Education was really respected. If we were reprimanded in any way by a teacher

we didn't dare tell our parents because we'd get a second reprimand at home. They always took the side of the teacher so there's no point going home to complain because father would say, "Well, what did you do wrong? You must've done something." There was no support where the parent would go to the school and complain about the teacher. You backed the teacher 100 percent.

AKM: Was the teacher usually right, in your case?

RS: Oh sure, sure, no question about it. We had good teachers.

AKM: Were you a good student?

RS: Yeah, I think so, I got into a little bit of difficulty as all kids did but I can't complain about the quality of education I received. Miss McCrea was not the only teacher of good memory. She was the best I've ever had at any level, but we had other good teachers. Roderick McLeod was a good teacher. We had two Keith sisters. We had Miss Olson and a few others. They were exceptional. People still talk about them. They really cared for the students and had a very good attitude and the kids profited from that.

AKM: What about the Church? You talk about the school; was religion central at all?

RS: Oh yes, I didn't go to a catholic school but we all had to go to the Catholic school to study for our first communion and confirmation.

AKM: What church was that?

RS: This was St. Mary's School, and of course we all went to our local neighbourhood church which was Our Lady of Mount Carmel Church from both schools. We had to take our religious instruction at the Catholic school, which was given by the nuns who taught at the St. Mary School. We had a lot of joint activities with the church. We had to go over to St. Mary's to get religious instruction because we didn't get it at McFadden public school.

AKM: As you mention, you were born in '29 at the start of the depression. I know, from reading your memoir, that the thirties were a very difficult time, not just for the country but especially for your family, and your father was out of work. I think for the Italian community in general, it must have been difficult because of world politics, Mussolini, debates about fascism, and so forth. Do you remember much about that period or do you remember a sense of worsening relations with the rest of the Sault?

RS: Well, in the beginning, Mussolini was very popular in the early 30's. It wasn't until he got involved in the Spanish civil war on the side of the fascists, and when he made a pact with Hitler, that he became unpopular. In the early years he had charisma, and was very popular. He was popular because he gained his prominence, first of all, as a war hero in World War One, and then after the war he became a journalist. The communists were very powerful in Italy at that time. At one point the communist party in Italy was the biggest communist party in the world outside of Russia. It wasn't until the Russians invaded Hungary in 1960 that the communist leader in Italy, Palmiro Togliatti, broke with the

communist Russian party. The Italian people were suspicious and really concerned about the communist party in Italy. The communist party was very critical of the government which was at that time under a monarchy, and it degraded World War One veterans. Mussolini stood up for the veterans and defended them and wanted to make sure they got the benefits they were entitled to. He had a very strong dislike of the communists. At one point he believed that they were going to take over the country and he persuaded the king, Victor Emmanuel II, to give him power as head of state to deal with the communists, which he did. Of course, he became an absolute dictator after that. In the early years he was popular. We got sort of a spillover of that (not much) in Canada, however, as the thirties went on, people were less enthusiastic about Mussolini. Of course, when he invaded Ethiopia and took the side of the fascists in Spain he lost a lot of his popularity over here, and some of it in Italy, of course.

AKM: I understand that the first branch of the Sons of Italy in Canada, maybe North America I can't remember, was formed in Sault Ste. Marie.

RS: Yes, there is a society. I think they're not very active at the moment. The first branch of the order of Sons of Italy of America was the G. [Guiseppe] Verdi lodge in Sault Ste. Marie. They're not very active right now, I think they may even be inactive.

AKM: Was your father a member of that?

RS: No, my father joined another society which was formed in 1912. They're going to have their 100th anniversary next year. It was called the

Guglielmo Marconi Society. Guglielmo Marconi, of course, sent the first wireless signal across the Atlantic in 1901 and he was revered universally. A group of Italians in Sault Ste. Marie decided to form a society which they called the Guglielmo Marconi Society and there's an equivalent ladies society. Today, you'd call it a settlement house. They would help immigrants to fit into the Canadian society. They would help them with their legal papers. They even had a section of the local cemetery reserved for young men who came over and were killed in an industrial accident with no relatives here. Well, the society would bury them. The Marconi society also established one of the first, if not the first, prepaid medical plans in Canada. They had society doctor, so if you couldn't afford a doctor, the society would send their doctor to take care of you and the society paid his fee. It was a very useful organism to settle people and help them get established in Canadian society. Today, those needs are not as great, or even present. It's more of a social club and a club to perhaps keep up historical and cultural connections with Italian heritage. But when it was first founded, it was a greater necessity at the time.

AKM: And your father was an active member?

RS: Yes, my father was an active member, and my mother was a member of the Elettra Marconi Society, which was the ladies division.

AKM: Doing similar work but for women and children?

RS: Yes.

AKM: I understand. By the time the Second World War came around, how were things? You were older—let's see, you were born in 1929, and you must remember the Second World War. I know that you were working in part of it as well as at school—

RS: No, I was in school until 1946 but at that time the war was over. I was involved in two ways. One, there was a shortage of labourers at Algoma Steel because of the number of workers called for military service. So they recruited students from the secondary schools to work weekends and during the summer at Algoma Steel and I was one of them. I put two shifts in at Algoma Steel on weekends and then we worked in the summer.

AKM: And you were paid?

RS: Oh yes, it was great money at the time.

AKM: What did you spend it on?

RS: Clothing, books.

AKM: Did you experience problems at school or in the wider community, about being Italian on the wrong side?

RS: I'd have to say yes. My father was in World War One in the Italian navy, which fought on the side of the allies. His ship was blown up by the Germans, and he was rescued by a British naval vessel. He didn't like the idea that Italy had formed a pact with Hitler in World War Two. There was—well, you

know, Italians were the enemy and we felt some of that animosity. Sure, I'd have to be honest with you and say yes.

AKM: Things got better after the war?

RS: Oh yes.

AKM: In your house did you talk about politics and world events?

RS: Well, because my father and my mother, still had relatives, brothers and sisters, in Italy, and my father's mother lived to be in her late eighties even after the war. They were interested in what was happening in Europe because of that connection. My parents corresponded with their relatives in Europe and they would write back home. The home my father had lived in when he was in Italy was occupied by his brother-in-law and it was damaged by bombing. They had to apply for repairs from the government and so my father was involved with that. So, yes, they were interested because they had family over there.

AKM: Yes... sure. Now, when you were a teenager, what did you want to be?

RS: Well, the war was still on for most of it, and I was in the army cadets which was not compulsory but you were really urged to join the army cadets. I went to army cadet camp a couple of times.

AKM: Where was that?

RS: Camp Bolton in southern Ontario. We took military training and I wanted to join the navy when I reached the age of enlistment but the war ended

before I got to that point. I had joined the Signal Corps in the cadets because I wanted to be a radio officer on an ocean boat. I wanted to work on ocean freighters and be the telegraph man. So I studied the Morse code. The only form of communication between ships, and ship and shore, was the wireless telegraph.

AKM: And I read that you became a deck hand on a freighter for a short period of time?

RS: Well, in my second last summer I was working at the steel plant and this freighter showed up and they were looking for a deck hand and I was hired on the spot. I worked the rest of the summer. Then I went, the following year, for the whole season from right after school and I stayed on until late December working as a deck hand and later on as a watchman. A watchman is sort of a foreman of the deck hand so I was a shift boss for the deck crew.

AKM: But you decided not to continue on on the boat?

RS: Well, the trouble was that the unemployment insurance provisions did not cover seasonal workers such as farmers, fisherman and sailors. So while the money was very good during the season, when you got back here in the winter time you used up all your savings trying to stay alive. You never got ahead. I managed to get a job at an insurance adjusting firm during the winter and got well established, got my own licence. When the spring came around I was invited back to work on the ship and I thought, "Well you know, I don't want to go through that business of working all summer and losing all your savings in

the winter,” so I stayed on shore. I worked as an insurance adjustor for six or seven years until I decided I needed more education so I pursued that.

AKM: Were you bored?

RS: Bored? No, but I had this feeling that I needed more education. I couldn't put my finger on it but I knew I wanted to study more and not having gone to a high school (I went to a trade school, the Sault Tech school), it was not the way you got to university. In my day, if you didn't go to high school after grade school, or university after high school, you missed the boat. Adult education, even the words, was not in play at the time.

I had this gnawing feeling that I needed to learn more and through a series of events where I was working as a volunteer councillor at a summer camp, the camp director encouraged me to pursue higher education. He directed me to a school in Massachusetts where they accepted students without complete formal high school. I wrote to them and they accepted me as a student. I wanted to become a phys. ed. teacher.

Well then, I found out from a person who had gone to school in the states that Ontario didn't always accept your American qualifications. He advised me that unless I intended to work in the States, I should pursue my education in Canada. As a result, I sent my application letter to the only three universities I knew about: University of Toronto, University of Western Ontario, and Queen's.

The University of Toronto just refused me flat out saying, “When you have eight upper school (i.e. grade thirteen) subjects, you may reapply.” But Western

and Queen's had developed a program to accommodate veterans of World War Two. I mean, you couldn't send a grown man back to grade school or high school after the war. The policy was that if you could pass an aptitude test that indicated you could handle university level work, they would accept you on probation. However, before you got your degree you had to have taken at least five grade thirteen subjects which you would add onto your B.A. program. I picked Western because it had a reputation for a good physical education course. I went there to become a teacher but in my second year I decided against that and decided to pursue law as a career and switched over. After my graduation I went to Osgoode Hall Law School.

AKM: How did it come about that you chose law?

RS: Well, I lived in a house with fifteen other students called Newman House at the University of Western Ontario. We used to have a reunion every year and former students would come back. Some had gone into teaching, some had gone into law. The teachers were very discouraging. They said that you weren't allowed to "teach." The parent-teachers organizations were exercising their influence on what happens in the classroom. The teachers would not get the backing that they felt they should get from their superiors and principals and the board. They were very unhappy with the teaching profession. Whereas the students who had gone into law inspired me. You know, this idea of taking your case all the way to the Supreme Court of Canada and fighting for justice, that really appealed to me. I decided to become a lawyer instead of a teacher.

AKM: Do you remember who those inspirational models were that came back and talked to you that the Newman Club?

RS: I can't remember their names now. That's over fifty years ago.

AKM: [Laughter]

RS: There were several. I talked to as many as I could and they all pretty well gave me the same advice.

AKM: What did you parents think about that decision?

RS: Well, my mother was very pleased that I wanted to pursue higher education before I left for university. My dad was a bit indifferent. He would have preferred that I went to work and earned a man's wages and paid room and board. My mother was more encouraging. She was illiterate and she really lamented the fact she that couldn't read or write and was very pleased that I was pursuing higher education.

AKM: Was your father illiterate?

RS: No, my father had achieved at the time quite a high level, the elementary school level. He was very good in mathematics and was quite intelligent despite his lack of higher education. He'd learned enough so that he could read and write both Italian and English and he could understand most of what he read in the newspapers. He was able to earn his stationary engineer's papers.

AKM: When you were growing up, did you know anyone who had gone to university?

RS: Oh yes, Mr. Vannini and Drs. Greco.

AKM: It just wasn't something that you could imagine for yourself at that point?

RS: No, I was not the pioneer in that respect. I was the pioneer perhaps in going as an adult special student and I encouraged a couple of other people to do the same. But I was not the first to pursue higher education; there were other people ahead of me who provided good examples.

AKM: By the time you ended up at Osgoode you were a little older than most of your classmates?

RS: Yes, because in between secondary school and university there was a six year gap, and that made me six years older than my classmates, both at university and at law school.

AKM: When did you get married?

RS: I was married before the start of my first year at Osgoode Hall. By the time I graduated we had a son.

AKM: And what was his name?

RS: Michael.

AKM: How would you compare your classmates at Osgoode to the ones in the mature student program at Western?

RS: Well—of course, I was a little older than most of the students at Western which made it easier for me to talk to the teachers, who were closer to my age. I had very good rapport with the teachers at Western. Osgoode Hall was a little different. It had large classes and a lot of the students there had gone to high school together and they continued on at Osgoode Hall together.

AKM: Toronto-based?

RS: Toronto-based, and some other students would call them cliques. And then there were almost no after-school programs at Osgoode Hall Law School or any law school. You just went to law lectures and then you disappeared. There were no sports programs. There was always a hockey team but that was not part of every day activity for most of the students. You just didn't hang out with the students after class. You just either went to the library or in third year you had to article yourself to a law firm, so you rushed off to the law firm in your third year. In fourth year, you were just burdened down with your studies. There were very little extra curricular activities at law school, so you didn't get to meet too many students.

I was part of a more adult group. Five or six of us were older than the average student in our class and had worked out or pursued other professions and had come back. We sort of gravitated to each other and formed our own study group. Instead of each one of us having to read all of the cases that were referred to by the professors in class, we would divide up the work and then we'd meet together and give the facts to the group. Then we would discuss the

principles expounded in the cases. That was very good; I found that study group very helpful.

AKM: Was it approved by the professors?

RS: Well, they never gave an opinion either way, but I don't know why they would not approve of it. It's a good way to study.

AKM: Sure.

RS: We challenged each other with our opinions, you know.

AKM: Who was in your group?

RS: Well, there was a chap who was a union arbitrator, Marty Levinson from Hamilton. There was a chap, David Goldberg, who ran a hides business successfully for many years and decided to get a law degree. There was a very close friend, Howard Garfield, who had been an optometrist. Those were the main ones. We would meet at least once a week at somebody's home and go through the cases referred to us by the professors during the week.

AKM: You'd been through the depression and came from a period of poverty, to a certain degree. Were there other people at law school like that like among your friends?

RS: I don't know. I'd never got to meet too many new people at law school, just the people I knew. There were two or three from this area that I knew, so we would chat and have coffee together. But there was not much opportunity to meet a lot of people. We had our 50th anniversary of Osgoode Hall

Law School last year and some of them I still wouldn't recognize, even today. I'd have to say, "What's his name?" You know?

AKM: It sounds like a very difficult period.

RS: It was—well, it was study-oriented. The social aspects were minimal.

AKM: Did you enjoy the content?

RS: I did, I enjoyed law studies. They put a call out for people to join the debating club. A fellow law student, Tom Quinlan from St. Catharines, and I had been on the debating team at Western and we were urged to attend an all-Ontario content at the University of Toronto (There was a team from the States.) There was a final debate at the University of Toronto and we were invited to go as a team. One of our debating opponents was Stephen Lewis. Of course I didn't know him at the time. I was impressed with his debating skills. My gosh, he was clearly the best debater in the whole event. I said to Tom, "This guy's going to go places." Later on I followed the career of his father, David Lewis, who was a fantastic orator. I've followed Stephen Lewis' career and he's an exceptional Canadian. At the time, I was so impressed with his debating skills.

AKM: Interesting.

RS: He won the debate, by the way.

AKM: [Laughter] I should have asked but I guess I guessed. So you were called to the bar in 1960. That was the year of the Canadian Bill of Rights and you mentioned your interest in social justice. Could you talk about that?

RS: Well, I graduated in 1960 and came to Sault Ste. Marie. Of course, there was no legal aid plan in existence in Ontario or elsewhere. There was what we called a “murder list.” When you came to the Sault you would put your name on the murder list and then if someone appeared on trial for murder, you’d go down the list and the next person on the list would take the case. Well, there was maybe one murder a year, and there were forty lawyers so the chance of being called to defend someone accused of murder was very slim. But I wanted to do as much criminal work as I could so most of what I did was *pro bono*, there was no legal aid plan, as I said, and there was no bail to speak of. Most of the clients would be in custody.

I’d go up to the district jail and my client would say, “Well, I’ve got a buddy here, he’s also charged with the same offence.” If you have to go to magistrate’s court for one case, you might as well go for two or three. I was on good terms with the governor of the jail and eventually, he would call me and say, “There is a fellow here who’s coming up on trial next Thursday, can you take his case?” So I started doing a lot of that and then it got too much for me. I approached our local law association and as a result of that, we formed a *pro bono* legal aid committee and we would take turns. But if nobody else could do it, I would take the case myself.

We continued that from 1960 to 1967 when the legal aid plan was inaugurated in Ontario. Because of my connection with the volunteer plan I was asked by the Law Society of Upper Canada to be the first area director for legal aid, which I accepted. Before then, I had been called to Toronto in front of the benchers [of the Law Society]; they were looking for models for both criminal legal aid and for civil. I went at least two or three times in front of the benchers, telling them what we were doing here.

What we were doing criminally got a bit of press. And people would call and say, “You’re defending criminals but my landlord is throwing me out with my furniture, why can’t I get legal help?”

I talked to some of the lawyers who were not criminal lawyers, who were willing to be of some help and the staff at the court house was willing to help. We fixed one clinic a month in the evening. The courthouse staff would do the intake, and then they would send the person to one of the lawyers in the courthouse. We had perhaps four or five volunteers. We even had a retired judge, Judge McDonald. The staff knew which lawyer was good in mortgage matters, which lawyer was good in matrimonial matters, etc. We had this legal clinic and the Law Society considered that as an option. But then the press and others said, “Well— one law for the rich and one for the poor. If you were rich you could hire your own lawyer but if you were poor you’d go to the clinic.” So they opted for the “pick your own lawyer” system.

AKM: The certificate and so forth.

RS: Yeah, exactly. Well, then, I met with the volunteer lawyers after every session. We found that a lot of the problems were not legal. They were matrimonial, they were financial, etc. I enlisted the head of the local family services at the Children's Aid to do some family counselling. She would come, and we would send people having family problems to her. She would counsel them. Then we enlisted the aid of the person in charge of credit counselling. I had helped set up the credit counselling service in the Sault, and gave lectures to the counsellors. He agreed to come and advise people on their financial matters. If they were insolvent, he would develop a voluntary payment plan and so forth, for creditors. We had a pretty well rounded civil clinic.

AKM: Well before Parkdale in 1971.

RS: Oh yes, Parkdale came as a result of the 1967 plan. They thought for a while we'd have a public defender in the criminal courts and we'd have a clinic for the civil. By vote, the Law Society opted for no public defender. You picked your own lawyer just like anybody who could pay, and same thing for the civil. Unfortunately, the money wasn't available throughout and has now been scaled back. We may yet end up with a public defender. We had clinics but they were not full service clinics.

AKM: What do you think would have been the right way to go?

RS: At the time?

AKM: Yes.

RS: Well, if the money was available, putting legal aid clients on the same footing as paying clients was not a bad idea. The press was always talking about one law for the rich and one for the poor, especially in the matter of bail. If you couldn't put up property, or if you didn't have a house, you wouldn't get bail. I used to see all of my clients at the jail, which was very good! You never have this problem of failing to show for court because they'd be taken by paddy wagon to the courthouse.

I don't know. I think if society can afford to pay lawyers in the same way as clients can, ideally it's a good system. But if there are budgetary restraints and you have health and education competing, perhaps a public defender, which they have in the States on a great scale, and maybe more well-rounded clinics with staff lawyers would be less expensive than hiring individual lawyers, might be the answer. Right now, from information given to me by practitioners, the legal aid plan is really on a minimal basis.

AKM: So when you started in practice, you're saying that there really was only *pro bono* for murder cases?

RS: That's right. I'm sure there were lawyers that never got paid by their clients. It was not organized. There was no means where the lawyer would be notified there's a person in jail who needs counsel. In one case, I was called by the judge who said, "There's a person coming up for trial. He doesn't have a lawyer, it's a jury trial. Will you take the case?"

Well, you can't say no to a judge. I'd just started practising and I was involved in the case for a number of days and it was a financial hardship. I had a staff to pay and rent to pay, I even had to pay out of my own pocket for subpoenas for witnesses and stuff like that.

[Interview suspended for break; a short section of audio is missing]

RS: ...In third year of law school, you articulated with a law firm to get practical experience. I managed to be articulated by the firm of Benson and McMurtry. Philip Benson, and Roy McMurtry, who later became Attorney General, Member of Parliament and Chief Justice of Ontario. Their work was almost exclusively motor vehicle negligence work, which meant a lot of court work. Because of my training and experience as an insurance adjuster investigating accidents it was a natural for me.

I always had a preference for criminal work and at the time I was going to law school there was no legal aid plan then in Ontario, as I said earlier. The Sheriff of York County, for obvious reasons, had organized a *pro bono* legal aid plan which was run by his secretary, Mrs. Grenell. She had a list of graduate lawyers and law students. She would call and you'd go up to the Don Jail, interview the client, and appear in court. I signed up for it. The trouble was that some magistrates, as provincial court judges were known then, refused to allow a law student to defend an indictable charge. So we would put on suits and pretend we were graduate lawyers. Some judges had suspicions. Since I was older than

most law students, I was very rarely questioned. I did as much criminal work as I could, and I enjoyed it. I had a lot of interesting experiences.

AKM: Can you tell me about them? Do you remember any of your student cases?

RS: Well, one stands out. A fellow was charged with stabbing another fellow with a beer bottle, a broken beer bottle. I went to the jail and interviewed him. Then I went to the place where they lived. Two couples lived in the same building. They had a drinking bout and a fight broke out. One of them had his neck cut. It was a drunken brawl, that's what it was. There was glass all over the place. The client said that they were fighting and rolling on the floor and bottles got broken and the fellow had rolled onto a piece of glass and got cut. I interviewed the two ladies who were there drinking with these guys and couldn't remember anything because they were drunk. It was really the victim's word against the accused's. The old sergeant who had investigated the case and I had met on previous cases. He kind of took a shine to me. You know, we would talk and he was very helpful.

Anyway, we get to court, [Laughter] and these two ladies had "cleaned up well," as the expression goes. Their hair was combed, nothing like I had seen at the scene. All of a sudden they had good memories and they were pretty sure that the beer bottle that had cut the victim was in the hand of the accused. Yes, they were rolling on the floor. I questioned them. I said, "Do you remember me asking you about it on the same day or the day after?"

No, they didn't remember that. Anyway, their evidence was pretty damning as they looked so respectable. As I said, they cleaned up well [laughs].

And then the sergeant gets on the stand. He says that he got a call, went to the scene, and took statements." That was all the Crown asked him about.

I had to cross-examine him, and I said, "When you arrived there, shortly after the event took place, what was the condition of the two ladies?"

He said, "Normal."

I said to myself, "Oh my God, there goes the case."

I said, "Normal?"

"Yes," he said, "drunk as usual." [Laughter]

And that was it. There was a reasonable doubt as to what they remembered. That case stood out in my mind. There was a couple of others but that was one of the most humorous. Sometimes a magistrate would say, "Are you a lawyer?"

And I would say, "No, I'm a law student."

"Well, you can't defend this case."

So we'd have to either adjourn and come back with a different magistrate who wasn't so inquisitive, or get a lawyer to do it.

AKM: Legally, were you entitled to—

RS: Probably not. Because you can appear in cases involving provincial offences—they call it summary convictional offences—in person or by an agent, and a law student could be an agent. But only a lawyer has status in court for a person charged with an indictable offense.

AKM: The person that you just described, your client with the beer bottle, what would have happened to him without you or another student?

RS: Well, he probably would have been convicted.

AKM: Without representation.

RS: Most police officers will answer truthfully, of course, if you ask them the question. I'm sure that you've all had the experience where you want to explain more and the lawyer will say, "Just answer the question."

So witnesses will say, "Well, nobody asked me that."

That was the case in the Wilbert Coffin murder trial in the Maritimes. The police officer, after the conviction, years later, said with regard to important evidence, "Well, nobody asked me that."

The sergeant in my case, I'm sure, would have told the truth if he'd been asked what was the condition of these ladies but the Crown didn't ask him. Because he told me at the time, "Well, they were all drunk, all four of them were drunk and they got into argument about whose beer was being drunk and they got fighting, and of course, being drunk, they fell on the floor, bottles got broken."

AKM: Was it about fighting for the underdog? What was it that was the appeal?

RS: Yes, some of that. Because my oldest brother John was a very militant union man and a shop steward. If a fellow worker got disciplined or fired he'd have to file a grievance and appear on the grievance. He had a tremendous sense of justice of what's right and what's wrong. He remembered what the situation was like before the unions got organized, where you could get fired at will to make room for someone's son-in-law, or if the foreman didn't like the looks of your hair, or for whatever other reason, if you didn't have blue eyes, you could be fired. And it wasn't until the union came in that you had some job security. So he remembered all that.

I remember my father's predicament when the union first negotiated a working agreement which included some holidays. Before that there were no holidays. At the place where my dad worked, at the end of the week the foreman would post the shift timetables for the following week, and my dad would look to see which shift he would be working the following week. On one occasion, his name wasn't on the list. He thought he had been disciplined for something, sent home, which was a terrible thing in those days, to be sent home. Today, people say, "Okay, I have two other days, I want to go fishing."

The foreman wasn't around. Dad came home with a long face and my brother asked what the trouble was.

Dad said, "I'm being punished and can't be at work next week. I don't know what I did wrong."

John said, "Tomorrow I'll go to your department and speak to the foreman," which he did.

The foreman said, "Well, John, haven't you read the collective agreement, the new one? Look, I'll show you right here. Your dad's got so many years in he can take a week's holiday, with pay of course."

My brother came home and told my dad, "You've got a week's holiday with pay."

My dad said, "Oh, no, it can't be. They're going to pay me to stay home? I don't believe you."

My brother took the collective agreement and showed him that he was entitled to a week's holidays with pay. Well then, my Dad, for that week, was really a big shot. He put on a suit. He was being paid now, on vacation! It wasn't that long before that there was no such thing, and no job security. My brother, John, had a tremendous sense of right and wrong, a tremendous sense of justice. And I think a lot of that rubbed off on me.

AKM: And he was how many years older than you?

RS: Well, he was nine years older. He was actually my idol. When growing up, John was very handy. He could fix bicycles. He could do anything. As I said, he was a fighter for justice. He impressed me.

AKM: Did your mother—what did she think of you defending people?

RS: Oh, she felt sorry for people in trouble. She knew that poverty was behind a lot of it. She had a lot of compassion. She'd seen people in hard times and she used to help them.

There were a lot of hobos who would congregate not very far from our house, waiting for the A.C.R. train to go north, and then from north you could go east or west on the C.P.R. or the C.N.R. We used to play in the nearby bush. There was a shack that our neighbours had built for their garden which was not very far from there. These hobos made a bit of shelter out of it. They had a pot-bellied stove which they found somewhere and made bunks. They'd have to wait sometimes two or three days for a train to leave. They would go and try to scrounge an onion or a potato and had what they called hobo soup. I got to meet a lot of them, I was just a kid, and they were fifteen or sixteen and their parents would say to them, "Look, I can't support you any more, you're on your own."

I knew a lot of them like that. They'd leave home and they fell into chasing rumours. The kids out west would find out that they were hiring for the tobacco crop out east, in Ontario. They'd hop the freights and come east. The kids from here would say, "They are hiring for the harvest out west," and go west. People were moving on these freight trains, back and forth, looking for work. It's all they were doing, just looking for work. There was a definition that we all used at the time, the difference between a hobo, a tramp and a bum. A hobo is a transient

worker. A tramp is a transient non-worker. And a bum is non-transient, non-worker. [Laughter]

AKM: Were there any bums in the West End?

RS: Not necessarily from our community, but people would come from other parts of town to drink because they would not be seen. They didn't want to be seen as drunk staggering out of a hotel so they would come down to our pubs. We had two pubs in our neighbourhood. I don't remember anybody bumming or panhandling in our neighbourhood. They usually could get work cutting wood, doing something or other.

AKM: So back in Toronto in 1960, and you had articulated in the Sault—

RS: Well, what had happened was, in my final year under the plan that was in existence set by the Law Society, you worked half a year and you articulated half a year – well, actually it was half a day for each. In the mornings, you went to law school and in the afternoons, you went to your office. The trouble was the professor would load you up with all kinds of homework cases to research, and your principal wanted you to go to court or give you enough work to keep you busy for more than half a day. You were always trying to juggle your time.

Anyway, in my fourth year I was back with Benson and McMurtry. I worked mostly with Roy McMurty on investigation of auto accident cases. My father became gravely ill in the Sault so we decided to move back here to help my mother and so on. A firm in the Sault agreed to take me on as a law student – FitzGerald and Holder. I came here and finished up my articles, and then they

offered me a position upon graduation, which I accepted. After three years, I formed a firm, Stortini and Caputo, with another lawyer by the name of Frank Caputo.

AKM: So, your original intention was maybe not to come back to the Sault to practise?

RS: I had pretty well decided to stay in Toronto because I had a home there. We had at least one child born there. We planned to stay in Toronto for awhile. I wasn't too happy with the lifestyle. We were afraid to let our kids have bicycles because of the traffic. We lived in the Bathurst and St. Clair area. Saturday afternoons I'd take the kids skating at the Forest Hill arena and it was just wall-to-wall people. In the summertime we liked to take our kids out to the beach—here, in ten minutes you can find a nice beach. In Toronto, I spent many weekends driving north looking for a public beach and there aren't any. When they allowed the expansion of the city of Kelowna, most of the streets ran perpendicular to Lake Okanagan, and each street ending is a public park. If you live on a street in Kelowna, you can walk down to this public beach and keep your boat there or swim. When they opened up the Muskoka areas and Lake Simcoe for development, they failed to reserve any public lands. I spent many weekends looking for a public beach and didn't find any. We ended up going to Centre Island and throwing frisbees back and forth and that sort of thing.

Skiing? The kids wanted to ski because we skied in the Sault. The closest ski hill was north of Barrie, Horseshoe Valley, but that's seventy-five miles away,

and in bad weather we'd get caught in snow storms. We tried Blue Mountain and Collingwood, and again, bumper-to-bumper traffic trying to get back to Toronto in snow storms. Skiing was very difficult.

Up here the kids had bicycles, motorcycles, skis, skates, hockey, and we have a beautiful outdoor rink just down the road here. The quality of life is much better.

AKM: I guess, balanced against that, was possible loss of income from coming back to the Sault? Was there a negative side for coming back to the Sault, from a career point of view or any other point?

RS: As an articling student I was being paid twenty-five dollars a week in Toronto which was the going rate. But the Sault lawyers offered me forty dollars a week. As a junior I think the pay was about the same. And then, after that, it's your own earning ability. I don't think financially it made any difference to my decision. It was mostly family reasons.

AKM: And so what was the appeal of Toronto?

RS: Well, because having been there as a student and working in a law firm as an articling student, you got to learn your way around the courthouses and registry office.

AKM: You mentioned that you saw, as a student, some of the biggest names and biggest stars in the legal world. Can you talk about that?

RS: Well, of course, we all knew about them. Everybody knew about Arthur Martin and John J. Robinette and Arthur Maloney. Arthur Maloney headed up an organization for the abolition of capital punishment. When I came to the Sault in 1960 to practice, we still had hanging. We still had the lash. And Arthur Maloney was head of an organization for the abolition of capital punishment and I worked on his committee here in the Sault. He was considered one of the top criminal lawyers. I think as a civil lawyer, Malcolm Robb was very colourful. I can't think of others offhand but there were quite a few giants at the time. To see them in practice, to see them in court and learn from and read about the case afterwards was fascinating.

AKM: So you came back up here with an activist's heart. What did the bar up here think of you?

RS: Well, they'd cooperate in the sense that a few of them agreed to come into this *pro bono* legal aid scheme we had, and also attended the clinics. Maybe half a dozen, not all of them.

AKM: Out of what, three dozen maybe?

RS: A little more than three dozen, about forty. When I first started practising in Sault Ste. Marie in 1960, there were about forty lawyers. A lot of them were commercial, real estate lawyers and were not interested in court work. And of the ones who were interested in court work there was about half a dozen contributing some time either the criminal work or the clinic.

AKM: So there was an opportunity for you in criminal work. Who did most of the criminal business?

RS: Anthony Vannini and Terry Murphy. They were the two main criminal lawyers in the Sault.

AKM: Did you think of going in with them? Was that an option?

RS: Well, there were no openings in their firms. They were single practitioners. Vannini never did take on a partner, and Murphy joined a civil firm later on. There were two or three lawyers who did a lot of work, and I wanted to do that kind of work and I never turned a case down. The retainer was never an issue with me.

AKM: How did you live? How many children did you have by this time?

RS: Well, I ended up with four. Because I had been an insurance adjuster I had done lot of work investigating accidents and had dealings with the insurance companies, and people would walk in. I didn't do exclusively criminal work as there wasn't enough. And you couldn't live on it because most of them couldn't pay. You know, if a guy goes to jail, he's not going to pay you. But I'd get retained and bring an action against someone who had an insurance company and because of my background, I did very well in accident cases. And so the insurance companies wanted me to act for them. I said, "Well, whoever comes in the office first, the client or the insurance company, I'll act for." I developed a pretty good practice in the motor vehicle negligence cases and that helped finance the criminal work. I never did make a lot of money as a lawyer. I didn't

acquire any wealth. I didn't own any buildings or anything like that. But I earned a living, you know.

AKM: And you left and went with Frank Caputo. Why did you do that? How do you make decisions like that in practice?

RS: Well, you know, Frank graduated a year after I did. And he kept prevailing on me to form a partnership.

AKM: Was he from up here too?

RS: Yes, he's from the Sault. And he kept after me, after me, and then an incident arose in the firm I was with that I was displeased about. When Frank approached me again, I said, "Okay." So I went back (and by that time I was a junior partner), and I gave my partners notice that I was leaving. So we formed this new firm.

I had learned some good office management techniques from Benson and McMurtry. Mr. Philip Benson was the most efficient lawyer I'd ever met. His systems were so good that there was little chance of missing a limitation date or having a case sleeping in your file cabinet that should be attended to. His system made it almost impossible. So I adopted all his systems and Frank Caputo liked that. We did very well. You know, building the practice each year.

Then, in 1969, we had a falling out. We had a philosophical disagreement and we decided to split up. I was on my own from '69 to '71. I got appointed to the bench in late '71. But I enjoyed those two years on my own. I could make my

own decisions as how I wanted to run the practice and so forth, so it was pretty good. But, as I said, I never made a lot of money as a lawyer. I never asked for retainers. I never pursued people who couldn't pay. It just wasn't an issue. But I couldn't do that unless I had the paying civil clientele, the negligence cases, suing insurance companies or acting for insurance companies.

AKM: Where were your offices during these years?

RS: On Queen Street.

AKM: Everybody's offices were on Queen Street?

RS: Everybody's office was on Queen Street; within a block from the courthouse.

AKM: Lawyers offices' always seemed to be above the banks in those days.

RS: Well, they were. They were all in musty old bank buildings until the firm of Magic and Murphy opened the first, ground floor, modern office.

AKM: Storefront.

RS: Yeah, well not store front, but office-front.

AKM: Walk-in.

RS: Yes, it was modern. They had a big house-warming, or office-warming. I remember Mr. Hugill, he later became Judge Hugill, I forget his first name now. He was there and we walked out together and he said to me, "By the time they've paid their rent, I've earned myself a good living." [Laughter] But they

all had the musty old offices, walking up, I don't know how they'd ever handle a client with disability in those days. But Terry Murphy had the first modern office and it was beautiful.

AKM: You wanted one like that?

RS: No.

AKM: No?

RS: No. No. No. My brother's company owned the building next door and they put in a second floor and rented half the space to us.

AKM: What address was that?

RS: 224 Queen. Just about opposite our hockey arena.

AKM: How do you think being a lawyer in the practice you had was different in the Sault than it would have been in Toronto?

RS: Well, in Toronto, because of the large number of lawyers and the large number of judges, a lawyer could pull a fast one on a judge, maybe mislead the judge and get away with it because he can avoid you easily. In the Sault, if you haven't got a good reputation you might as well take down your shingle and move. You can pull a fast one on a judge but he talks or she will talk to her colleagues, "Watch out for so and so, he'll pull a fast one," and your efficiency goes down. When I was before the magistrate, for example, I learned that lesson well. You never mislead the other side or the bench—never! It got to a good point because in those days you had to prove everything in court.

You couldn't say, "He's got a job. I talked to his foreman and they'll take him back." You had to call the employer as a witness.

AKM: Here?

RS: Well, anywhere, especially in Toronto. But here, I could say to the magistrate, "I've talked to his employer Mr. So and So and he's willing to take him back," and that was enough.

Because I'd be in court and somebody would be there and be completely confused. The magistrate would ask me, "Mr. Stortini, would you help as a friend of the court." There's this ancient concept of *amicus curiae*, and I did a lot of that. And often people would have been in trouble if someone, not necessarily myself, someone like myself didn't intervene.

They'd all be in the prisoners' box during before court and during the recess and they'd call me over and say, "Can you help me?"

One guy, who was charged with breaking into a car and stealing a camera, up on the highway here, between here and Wawa. Theft from a car. Waiting for his trial, he called me over.

I asked him, "What are you charged with?"

"Well, stealing a camera." He said, "I stole it and the police got it back." He said, "I was in Wawa and I called home and my mother is very, very sick. And I'm trying to hitchhike back home." (I forget where his mother lived, somewhere in

Southern Ontario or maybe Quebec.) He stole the camera to maybe sell it to get enough money for a bus ticket home, and I believed him.

When the court reconvened, his case was called. I said, "As a friend of the court I talked to the accused and this was what happened and there's been full restitution," and so on. The judge and the Crown counsel agreed to put him on probation and that was it. He had no money to go home, so I had my secretary go and buy a bus ticket for him to get home. The point I was trying to make, is that if you don't establish the trust of the bench in your practice of law, you might gain advantage for your one client but you'll hurt all your other clients. I always had a good relationship with the judges.

In the big city, such as Toronto, you could pull a fast one and some will try and get away with it because they can avoid the particular judge.

AKM: So, it was a better quality of justice up or no, up here?

RS: No. I wouldn't say that. One good thing about my five years in Toronto was that I had a wide variety of cases. Jury, non-jury, criminal, civil, drugs -- much more than I would get here. When I came to the Sault, we didn't have the volume and the variety. But having had five years in Toronto, when the opportunity came, I was prepared for it.

AKM: You were well experienced.

RS: Yes, I had the experience.

AKM: What about Aboriginal clients? Who were your clients?

RS: I had no wealthy corporations as clients. I had a very bad experience. At the beginning we used to have, when there was a high court and district court, we had high court assizes. A judge would come from Toronto and do the criminal work that only a high court judge could do. In cases of a certain monetary level, that high court would have had jurisdiction. On the first day the judge convenes everyone to speak to the cases: "How long will this case take? Okay, we'll probably finish that in two days. Who's next?" He settles the list so you have an idea when your case might be called.

A lawyer from Toronto (I don't think names are necessarily important) called the registrar and said, "Could you have somebody speak to case number 41 on the list. By agreement, it's being traversed to the next sittings."

So I was standing there and the registrar said, "You're going to be in court this afternoon?"

I said, "Yes."

He said, "Would you speak to this case? By consent it'll be put over."

I said, "Okay," so he gave it to me.

The case was called. It was a case against Algoma Steel. A bunch of workmen refused to take on a job they felt was inappropriate or dangerous, I've forgotten which. It was an unhealthy workplace case. They all got fired. That was before the Charter of Rights. They sued for wrongful dismissal. They had a

lawyer in the Sault acting for them and the steel plant had a Toronto lawyer acting for it.

The case is called, and I stood up and I said, “My lord, I’m here to speak on behalf of Mr. So and So, who is counsel for Algoma Steel, and I’ve been advised that the case is to be traversed on consent.” Open and shut.

The local lawyer stands up and says, “That’s not the case. I never consented to anything like that.”

So obviously there was a misunderstanding. The judge looks at me and says, “Is that so?”

And the plaintiffs’ lawyer kept saying, “They’ve been jerking these plaintiffs around for months; starving them—.” You know, he gave a real tirade against Algoma Steel and its lawyer. Of course, I had nothing to do with that.

So the judge says, “I’m going to look at the file and I’ll give my decision later on.” He comes back and he says, “This case has been adjourned X number of times, mostly by the steel plant, and it’s obvious they’re trying to starve the plaintiffs into settling or something.” He gave tremendous criticism of the client and of the counsel, how he wasn’t ready for trial, etc. and he had the case put over.

After court, I went back to the office and I called the lawyer and I said, “The registrar asked me to speak on your behalf. I made the application. It was refused. And the judge wasn’t pleased with the record.”

“Oh,” he said, “that’s okay.”

So out comes the Ontario Reports (we got them looseleaf, you know, every week.) It’s got the report of this particular case showing counsel for the plaintiffs, C.B. Noble, counsel for the defendant, Ray Stortini, and this tirade about jerking the system around.

I said, “This is an error.”

I called up the lawyer, the lawyer of record. I said, “There’s a mistake here, they’ve got my name instead of yours.”

“Oh,” he said, “I’ll go see the reporter and I’ll get it corrected for the bound version.” (We get this weekly report of cases, and at the end of the year they are bound.) He called me back and said, “The reporter said I can’t change anything without the judge’s consent.”

And he was told by the judge, “Don’t change anything.”

The lawyer went to see the judge. “He practically threw me out of the office.”

I called the judge and he refused to do anything about it.

I called the Chief Justice, Gregory Evans, and I related the situation.

“Oh,” he said, “that’s not fair. I’ll go talk to him.” Later he called me back and said, “We almost came to blows. He said he won’t do anything about it.”

So I called the judge and he said, “If you’re going to be in practice, you have to have a tough skin.”

I said, "My lord, I don't mind taking criticism if it's something I've done, or failed to do, but I've nothing to do with this case and that's going to be in the law reports forever. My grandchildren will read that I've done all these things which I haven't done."

"Well," he said, "I'm not going to change it. It's there and you've just got to suck it up," or words to that effect.

And that was it. It's there in the law books and it will be there forever.

AKM: That must have really burned, considering your family's history with Algoma Steel.

RS: It was terrible. It was undeserving. I never forgot that. As a judge, you should undertake a little bit of a difficulty to set the record straight. You have to do it.

AKM: The judge is the boss, eh?

RS: Yes, and you know, sometimes...what good is power if you can't abuse it? [Laughter] Anyway, that was a very unpleasant experience; probably the most unpleasant experience I had as a lawyer. I had a lot of good experiences as a lawyer, good results, but that was the most unpleasant.

AKM: You mentioned at law school there were various cliques and so forth. How about up here, in the Algoma bar or the Northern Ontario bar, how did that work?

RS: No. We don't have as many meetings as we used to have. Whenever a visiting judge came we'd have a dinner and we could get all of the lawyers in one room at the main hotel, the Windsor Hotel, that high-rise hotel downtown, so we were very close knit and there were good relationships among the lawyers. It was fine. We had law meetings every month, general law meetings of the association and the local judge would be invited, and he'd say a few words. You know, "Don't forget, guys, that rule so-and-so has been changed. Now you have to have this, this and this." He gave some helpful advice, you know, it was fine. We don't have as many meetings now and there's no high court judge visiting now because we are the high court judges. It's a different atmosphere.

AKM: Sounds like it was more collegial in the past.

RS: Now, that collegiality is diminished. There are over a hundred practising lawyers in Sault Ste. Marie and I used to see some of them in court and the ones that didn't appear in court I very seldom saw. Because I don't live in the Sault and if I did, I probably wouldn't socialize too much with the practising lawyers (because a lot of judges feel that there should be no contact with practising lawyers) but there'd be very little if any. But also, I am a member of the bar association and they have very few meetings. They have a couple of social events but they are not that well attended.

AKM: You mentioned that the judge would say, "Here's what you should know, guys..." sort of thing and so, speaking of guys, how many women were in the Algoma bar?

RS: There was one, one lady lawyer named Maura McGuinness. Her father was Crown attorney in years gone by, before my time, and she was the only practising lawyer that was female. She didn't do court work. Unlike her father, she preferred commercial, real estate work. At the present time, there must be—oh gosh, maybe a dozen, not a majority, but they're a good minority of women in the local bar. They tell me, in law school they're the majority now.

AKM: That's right.

RS: So it's changed considerably in my time.

AKM: Yes. Any comment about that?

RS: No. At one time, the Jurors Act of Ontario specified that a juror can be excused by the judge for good reason. (You know, "I've got an ill parent.") But a woman could be excused by simply saying, "I don't want to serve." So there was a different standard. I had a case in Brampton where a young woman was charged with drug trafficking. I go into court and the sheriff had summoned a panel of about ninety people for jury duty.

The lawyer for the accused got up and said, "I challenge the array."

I said, "What do you mean?" (If it's impropriety with regard to the jury panel, the judge can look into it.)

He said, "Well, if the population demographic is fifty-fifty male/female, why are there no females on this panel?"

I said, "That's a good question. Send for the sheriff." The sheriff came in. "Sheriff, can you explain why there are no women on this panel?"

He says, "Oh, we don't bother calling women because they don't want to serve."

I said, "That's not your decision, that's the woman's decision. If she chooses to invoke the section of the act, the accused can't complain because it's the law. But you can't make the decision for the juror."

So I struck out the whole panel, and ordered him to bring another panel as it fell on the list, based mainly on the assessment roles (and then they check with criminal records and stuff.) Well, the sheriff was really upset about that and said some nasty things about me. But the press got a hold of it, and by a tri-party agreement in the Legislature that same week, they gave three readings to an amendment to the Juror's Act [and put] women on the same basis as men. I felt very good about that.

AKM: Were you surprised at the reaction?

RS: In law school, our professors would say that some women would show up on the panel, and they were like an unknown quality. And because they were an unknown quality, they said, "You'd better stay away from them." So they'd get challenged, peremptory challenge, something you don't have to give a

reason for, you'd just say, "I object." You have so many of those. But you know, as far as I know both in Toronto and here, with women on the jury (and there are a lot of them now on every jury), the results are what they should be. If you think as a judge the accused should probably be convicted, he usually is. If not, there's a good defence, he probably won't be. It's still about the same so there's no difference. Actually you get less problems of "I can't"s, you know, "I'm the sole owner of a business, I can't serve." I see no difference between men and women jurors.

AKM: What about when you were a criminal lawyer, did you challenge women?

RS: I can't remember, probably not too many called for jury duty.

AKM: During this period, in the '60s, you were also a city councillor, right?

RS: Oh yes. I served two, two year terms from '64 to '66 and '66 to '68.

AKM: What propelled you into that?

RS: Well, as legal aid director I saw a lot of problems mainly rising out of poverty and lack of housing for low-income or no-income people. I also saw a situation where a company wanted to establish the first shopping mall away from the downtown center. They got some cheap property on the north end of the city. They built a shopping mall (a small one compared to what you find today). They wanted to stay open longer hours and weekends which was against the city bylaw. They were charged by the city for staying open, and they said to the city,

“We’re going to move to strike out your bylaw. If we win, we’re going to sue you for the lost profits that we incurred because of the bylaw and all this stuff.”

The city allowed them to stay open and the company kept stalling— adjourning, adjourning, adjourning and people got used to shopping after hours, like late at night and weekends, and they liked it. The mall hired mostly temporary people. When the city was able to convict them, they appealed, again they stalled and stalled for another year or two. Finally, it went before the Court of Appeal and the court upheld the bylaw.

That Friday, the company said to the employees, “Unless the city reverses that bylaw Monday night at their meeting, don’t bother coming to work Tuesday morning.”

I went to the meeting because it was a hot topic, as a spectator, and the city hall was small, they didn’t have the hall chambers they have now. The place was jam-packed. They should have got a bigger place and had more security. It was a rowdy group because their jobs were at stake. It had been a 7 to 6 vote when it first came up, way back. Two of the alderman who had voted in favour of the bylaw two years before did an about face and the bylaw was struck down. I confronted a couple of the vote-changers.

I said, “You know, you let this big company show the local boys how to get off the street.” I said, “Make them... force them to respect the bylaw for a period of time, then if you want to reflect on it and consider it again, bring it up again and

have a calm discussion but under this pressure you shouldn't have done it, you shouldn't have reversed it, they just played with you."

Well, they said, "What do we do in the face of all this public opinion?"

I got so disgusted. I went to a meeting of a drama group that was scheduled for that night and when I came in, I was still cursing under my breath.

They said, "What's the problem?"

I said, "Well, those weak-spined counsellors blah, blah, blah." I said, "I know, I know—why don't you run instead of criticizing them?" I said, "Well, you have a good point."

Well, we had a very popular counsellor in my ward, the ward for the Italian section, Mike Sanzosti, who was ill and wasn't running. I called him and he said that he wasn't going to run so I put my name in, and got elected for two terms but I got defeated for a third term. I had read about the first Kennedy election, how you go door-to-door to identify your support and on election day you get them out and you have people inside to keep track of who's voted and who has not, and you have people who would go back and phone and offer a ride to people who haven't voted yet. So I adopted all of those systems. I went door-to-door the first two elections and met a lot of people and I got the highest vote.

Now for the third term. We had one psychiatrist in this whole area and he was busy beyond belief. He wouldn't take addicts or criminals, or drunks. He

wouldn't take anybody like that. He said, "I'm too busy keeping Dad on the job and Mother in the home, I can't do anything else."

I was very critical in a couple cases I had where I obviously needed psychiatric help for my clients, but he said, "What you get in our prison system is laughable."

As a judge, I visited Guelph Penitentiary, and the psychiatrist there said, "If I can spend fifteen minutes a month with a patient here, that's a lot. If you don't get it in the community you don't get it otherwise in most cases."

I was very critical about the lack of psychiatrists in the Sault. Well, then, the head of the hospital called me and said, "You've been very critical. Could you come to a board meeting and we'll try to explain to you what we're trying to do?"

Well, when you open your mouth, you've got to back it up. So I went and they convinced me that we needed more services. I did what I could, and then they called me again and said there were two people from the Ministry of Health from Toronto coming to look at what we need and how to get it.

"Could you come to meet with them?" Well, after shooting off my mouth, I couldn't say no so. I spent a week with these two people from the department of health from Queen's Park. And we came to the conclusion we needed help. You could get psychiatrists but they don't want to spend their time doing intake and testing. You have to have a full-service clinic. You can hire psychologists to do all the testing and recording and the psychiatrist will do what he has to do. That was the conclusion after the week and it worked out. We did have more and more

help later on. [This all happened] the week before the election and I couldn't go door to door because I was meeting with these doctors. I lost the election.

And when I talked to some of the people afterwards, they said, "Well, you didn't come around."

You can't say, "I'm riding on my record," that doesn't work.

AKM: These are your life-long neighbours, were they?

RS: No, the ward's larger than that. I won my own poll, it was just one poll out of maybe ten. But you know what one ex-mayor told me, "The question is always, what have you done for me lately?"

So I lost and I felt very bitter. I ran for the '68 federal election. Lester Pearson had resigned and Trudeau became leader of the opposition and our local MP had retired. I was persuaded to throw my hat in the ring and I lost that to Terry Murphy.

AKM: Another lawyer.

RS: Yes, he was silver-tongued. I spoke in three languages but it didn't mean anything. I was far too serious.

AKM: You weren't silver-tongued?

RS: No. No, I'm not. I wasn't. Anyway, I was hurt, having lost. You know, as Diefenbaker says, "You taste the bitter ashes of defeat."

And then, on the heels of that, I got a call from the Minister of Justice in Ottawa saying, “We’re looking for a judge for Toronto. Would you accept being appointed to the county court in Toronto?”

I said, “Well, okay, how soon do you have to know?”

He said, “I have to know by Thursday’s cabinet meeting at three.”

This was Monday or Tuesday. I went home, talked to my wife. I was in favour of moving and she liked Toronto, so she said, “Sure.”

I called him back—it was John Turner actually—and I said, “Well, I’ll go to Toronto.”

What had happened was the Minister of Justice before him, Otto Lang, and then John Turner, had developed a policy that we ought to get away from just appointing Bay Street barristers to the Toronto bench. They wanted, as John Turner or Otto Lang said, “some poor men’s sons.” What they did is set up a committee headed by a professor of Ottawa University Law School, named Edward Ratushny, who vets applicants and gives an opinion, whether the candidate is or is not qualified. They also check with the Canadian Bar and Ontario Bar. They check with the judges and they even check with the local bar, and then they send a recommendation. Among the things that Turner did and Otto Lang did, was to ask the chief justice of each province to ask the judges to recommend practitioners in their area that they know would be good judges.

Anthony Vannini was the judge here. He called me to his office one day and said, "I've been asked to send out names of lawyers who would be suitable for the bench. Would you accept me putting your name on the list?"

I figured, well, maybe in four or five years, I might get a call, so I said, "Sure, put me down." Because, apparently, if you refuse once you don't get asked a second time.

Well, my gosh, within months I get the call to go to Toronto. I said I would. We moved to Toronto, and I sat on the York County bench for five years and then I moved back to the Sault. There was an opening here because a third judicial position was created, and at that point I wanted to move back up here for lifestyle reasons.

AKM: So you're saying that if you hadn't had those disappointments at the political level you maybe would not have become a judge?

RS: Well, I wouldn't have accepted quite as easily.

AKM: At that point, anyway?

RS: Yes. I was hurt and bitter, you know. It was Malcolm Robb, I believe, that ran for one of the areas of southern Ontario and was turned down. He ran for mayor and lost, he said, "If you reject me, I'm going to reject you," and he moved to Toronto. [Laughter] I think it was Malcolm Robb, he was a colourful figure. I know about the bitter ashes of defeat.

I was convinced that you achieve social reform through political action. That's where the decisions are made. Legal aid might be funded in a large part by the federal government and the criminal law is under the federal government. I wanted to be where the decisions were being made, so I ran, but I didn't make it. I wanted to be an MP more than I wanted to be a lawyer.

AKM: You didn't try again?

RS: No. No, because right on the heels of that—this was '68. In '71, I got appointed to the bench. No, the second election hadn't come up yet. Terry Murphy lost in the second election. Trudeaumania was a big factor in his election. They had the local hockey arena jammed full. I went to the meeting, and there was charisma and you could just feel the crowd. When Pierre Trudeau showed up, it was just amazing. You could see where a demagogue can really work the crowd and manipulate the crowd. I hate to use the name in the context of Trudeau but a Hitler or a Mussolini could use that charisma for evil. I won't say that about Trudeau, but the charisma was palpable. Murphy got in on that. I think that anybody would have got in. I think I would have got elected on that. Murphy was an intelligent man. He was on the Justice Committee. I think he was also the chair of NATO for awhile. But he lost out next election. The NDP got in.

AKM: Maybe it was for the best then?

RS: For me? Oh yes, I think so. I still wonder what would have happened if I had been an MP. It would have been an exciting time, but who knows?

AKM: How about being an agent of change as a judge? When you thought about being a judge, how did you formulate your philosophy?

RS: Well, people often forget, those of us in the legal profession, that the law is not a static thing. It's common law, it changes with the times. A judge has to be open to change. Just because it's new, doesn't mean it's not right. There's also a school of thought that unless the Criminal Code allows it, the judge can't do it. Whereas I and a few others say, "Unless it's prohibited by the Code, you can do it." For example, probation was invented by judges. It was not in the Code. It went in the Code afterwards. The establishment of Community Service Orders is one of the things that I'm quite proud of.

AKM: You developed them.

RS: Yes, while in Toronto I looked into it, did some research. The policy is applied that if the person's non-violent, instead of filling up our jails with non-violent people at great expense to the taxpayers and supporting the family on welfare, if the offender can fix the problem that he caused to the victim, for example, if he broke a window, broke a door, smashed something, you have him make restitution. But if there's no victim as such, like in a drug case, then he should repay society. You try to find out what skills he has, and what needs are there. I was on the board of the John Howard Society of Toronto at the time, and I asked them to survey all the charitable agencies on the grand jury list. At that time we had a grand jury panel, which has since been abolished. The grand jury looked into all institutions supported by taxes, and would report whether to the

Court whether they were being run well or not. “Is there somebody languishing in a jail for months without trial for no good reason? This seniors’ home is not safe...” whatever.

The John Howard Society did a survey for me: “What needs do you have? If we send somebody from the court, non-dangerous, would you accept that, and keep track of the hours?”

And they all said, “Yes, yes. We have needs that are not being met by budget or by volunteers.”

We didn’t want to have the City of Toronto fire a hundred workers. We’d take their jobs, we’d be punishing the wrong people. These needs had to be things that were not being done because of lack of budget or lack of volunteers. So, I was satisfied we had a good bank of needy organizations.

We then had the first client, this fellow by the name of Jones. He was a machinist in England. He was working a lathe and his work buddy took ill or moved away or maybe even died. The lathe sat empty so Jones would put the piece of steel in there and instead of turning out one screwdriver, he turned out two.

At the end of a period of time, he was called into the president’s office and the president said, “How do you explain your production is so much higher than anybody else’s?”

Jones told him, and the president said, “You know, we need people like that in this company, and in this country. We will support you to go back to university and become an engineer, an electrical engineer.”

He did do so. And then, the war broke out and the first problem that the Allies had in World War Two was the magnetic mines. The Germans had a mine that would be attracted to the metal hull of a ship and then blow up. They had to neutralize the magnetic field, and Jones worked on a team that learned to neutralize the magnetic field, and allow the Navy to blow that mine out of the water.

Jones did good work. Well, then, he decided to emigrate to Canada and he got a job at Ontario Hydro. I don't know if you remember, probably not, but Toronto used to be on a 30-cycle electrical system where the lights blinked all the time?

AKM: No.

RS: Oh, I remember anyone going there used to get a headache and the lights continued to blink on a 30-cycle. Hydro was going to switch over from a 30-cycle to a 60-cycle. Because Jones had experience doing that in the city of Birmingham in England. He was engaged in the project. They successfully did that. They had to change all the motors and there was some business disruption. Jones had to work with people to lower the extent of the disruption. That job was completed. He was getting close to retirement age. He thought, “Well, I don't

want to sit around and do nothing.” So, he decided to go into the consulting business.

He thought that the best way to meet people would be in downtown Toronto, so he got a job as a courier for a stock brokerage, the guys on the bicycles. (Well, he didn't ride a bicycle, he walked or took the streetcar.) He did that, he carried these negotiables, bonds and stocks and what not, from one brokerage house to another. And he noticed that when he arrived at the recipient's office with his pouch, they wouldn't check anything, just put them there on the desk. They didn't check anything and he reported that to his employer.

He said, “They don't check, there could be something missing.”

The employer said to him, “Look, you're a courier, leave the thinking to us.” [Laughter] And so he said, “I'll prove to them that it's a faulty system.” And whenever he had a bearer bond, he would take it out and keep it.

AKM: Just like cash.

RS: He accumulated half a million in bearer bonds, I think it was (I forget), Calgary Power and some other, but they were payable to whoever had them. He said, and I believe him, that he was going to confront his employer and say, “Look, half a million dollars you said was not possible.” Unfortunately, what happened is that he had a marriage breakdown. He said, “Something happened to me. I went nuts. I grabbed these bonds, bought a ticket and flew back to England. When I got there I said, ‘What am I doing?’” He stuck the bonds in a

safety deposit box while he pondered on it. By that time, of course, he didn't show up for work in Toronto.

[Mary Kay Stortini entered the room and greetings are exchanged.]

They found out these bonds were missing. They contacted Interpol in London, who visited him, and he readily admitted that he had the bonds and he took them to the bank. They got the bonds. He came back here without extradition. He came up before me for trial. The jury found him guilty of theft because he may have taken them with the intention of giving them back, but having retained them, and leaving the country, that makes the theft complete.

What do you do with a guy like that? I mean, he's never been in trouble before. I found out, because I was involved with the John Howard Society, that the equivalent female organization called Elizabeth Fry Society had just bought a house in downtown Toronto. They needed to install air conditioning but they had no money; the equipment was there but they had no money for the installation. When Mr. Jones appeared in front of me, nobody had heard about community service orders, lawyers or anybody. I said, "Mr. Jones, instead of sending you to jail, would you consider installing this air conditioning equipment for the Elizabeth Fry society?"

He replied, "Sure, I could do that."

And I asked, "How much time do you need?"

And he said, "Oh, a couple hundred hours."

I said, "How about three hundred hours?"

"Oh, that'll be fine," was the answer.

I made the order that he perform his three hundred hours of community service, and he did. I got a call from a *Toronto Star* reporter, or rather there was a note on my desk that said call so and so at the *Toronto Star*.

I asked my colleagues, "What should I do, I got a call from a reporter?"

Half of them said, "Don't reply. They'll sink you every time. Don't talk to them."

But Judge Farquhar Oliver, an older judge, Scottish, was a good man, I really enjoyed Judge Oliver. He said, "Well, find out what he wants. Of course, you can't talk about anything that's not on the record but find out what he wants." Which was good advice.

I called the journalist back and I said, "I can't talk about anything that's not on the record but what is it you want?"

He said, "I heard about this order you made in Regina versus Jones. I'm writing an article. I think I'm going to be critical but I want to make sure I've got my facts straight."

I said, "Well, that sounds like responsible journalism."

He said, "Well, I've been a journalist for thirty years and that's the way I operate."

"Well, I'm happy to hear that, what is it you want to know?"

Well, he didn't know that full recovery had been made. He didn't know that the guy spent fourteen months in the Don Jail, which is worth double that time and which is more than he would have got in a sentence. And he was doing this work for the Elizabeth Fry Society that they badly needed. Next day, there was almost a full page article, which was very complimentary.¹

Well, then the Rolling Stones concert toured in Canada and Keith Richards was a heroin addict and he brought along enough to serve him through the tour. Well, he got stopped at the border and got caught. He appeared in front of my colleague, Judge Lloyd Graburn. There's no question about his guilt but now, what do you do about his sentence?

Judge Graburn comes to me and asks, "So what's this community service order program you started?"

I told him, and he understood it.

He went back into court and said to Richards, "Instead of sending you to jail, because I have to for this quantity would you consider doing some community service?" He added, "The CNIB [Canadian National Institute for the Blind] according to the press, is in real dire straits financially. Would you consider doing a concert for them?"

¹ Brenda Zosky, "Making Punishment Fit the Crime," *Toronto Star*, 12 Nov. 1978, A1, A14.

Richards talked to Mick Jagger and the other two guys and stated, “Your Honour, we will do two concerts in Maple Leaf Gardens for the CNIB.”² And they did and it was completely successful.

The Crown appealed saying that it wasn’t in the criminal code. But the criminal code says in a probation order, you can order the person to attend a clinic, go to work, abstain from this or that, stay away from so and so, and “any other reasonable condition.” Now if the offender agrees, how could it be unreasonable? I always ask the offender, “Would you do this? Are you willing to do that, or I’ll treat you in the historic way.”

The Crown appealed. Arthur Maloney acted for Keith Richards. The story I heard—and I think it’s true—was that prior to the Court of Appeal hearing, one of the best known judges in the English-speaking world was Lord Denning from England, and he was coming to Canada. He arrived in Ontario and the Chief Justice of Ontario was his host. Among the things he did, he took Lord Denning to a law class, it might have been the graduating class at the University of Western Ontario Law School. There was a question and answer period.

One of the students asked, “M’lord, what do you think of this disposition? A musician coming to Canada (and so forth and so forth), ordered to make two concerts which he agreed to do.”

“Oh,” the Lord Justice said, “What a splendid disposition!”

² Bob Graham, “Rolling Stones will join Richards for blind concert,” *Toronto Star*, 25 Oct. 1978, A1.

Now, there is the Chief Justice of Ontario sitting right beside him, who presides on the appeal panel.

The appeal was heard. The Crown counsel got up and said, basically, “That’s not in the criminal code,” and so on.

Arthur Maloney was starting to get up and the Chief Justice said, “Mr. Maloney, we don’t have to hear from you, the appeal is dismissed.”

Well, then Community Service Orders got on the books, and everybody knew about it. Jones’ order had not been know until then. There was only one article. After the Richards case, other courts started doing it. It spread right across Canada. I received inquiries from the United States, Québec, Australia. The last time I saw the figures, the savings and work performed are in the millions of dollars.

AKM: You must feel very good about that.

RS: Oh, I figured I was sent to Toronto for a purpose, and that probably was the purpose.

AKM: How did you come up with the idea though?

RS: Well, I didn’t like the idea of non-dangerous people sitting on their duffs in the jail at taxpayer’s expense. We jail more people, except the United States of America, for more crimes than all the modern European nations.

AKM: So you said to yourself, “What do other people do in these circumstances?”

RS: Well, they weren't doing that.

AKM: From research in Europe?

RS: No, I don't think they were doing—

MKS: Aboriginal people have that circle.

RS: They have sentencing circles, and where you use it, it has the same effect. They know what they will do and what they will not do. I just felt that there must be an easier way than prison. Why lock a person in a cage when he's not dangerous? You lock up a wild animal or a person who is a danger to the community. I don't care whether he gets treated or not, he has to be locked up. If he's no danger to the community, the money there could be used for education, health, roads or whatever. We have this habit of locking people up. We still do and you know there's talk of building more jails. And they'll fill them.

AKM: But you're quite a strategist too because you had to wait until a perfect example—

RS: It came up very quickly.

AKM: Did it?

RS: Yes, I didn't wait too long. I had the John Howard Society get in touch with the School of Social Work in Toronto. They agreed to do the supervision and keep track of the hours and if there was a transportation problem, get the accused to the workplace.

I work as a volunteer at our local soup kitchen. I'm also on the board. There was a young lady there. She was sentenced to do community service hours for shoplifting. She said to me, "I'm doing community service hours, do you know anything about community service hours?"

I said, "Yes, I invented it."

AKM: [Laughter]

RS: Yes, I'm very proud of that, you know, very proud.

AKM: So, you were named as a poor man's son. They wanted to get the judges from the—

RS: Well, that's what the minister of justice said.

AKM: Yes. So that was before Attorney General Ian Scott changed how judges work?

RS: Yes. Well, Ian Scott as Attorney General, Minister of Justice of Ontario, had jurisdiction to appoint provincial court judges.

AKM: Provincial, yes, this is federal.

RS: Right, I was a federally appointed judge. But they follow the same procedure. They want diversity and they want good people.

AKM: Were you proud of being a poor man's son?

RS: It doesn't come up very often anymore.

AKM: Then?

RS: We don't see very, very poor people and very, very wealthy people in stark contrast. No. You don't see that. I think I learned a few good things, you know. I learned about poverty, and I learned about hunger.

AKM: Things you remembered when you were on the bench?

RS: Yes. But we were always clean. My mother washed the same pair of jeans almost every day if they got dirty. We were poor but we could still be clean, and we didn't starve. We had a good garden.

MKS: An interesting thing about that—I find it interesting, anyway—is that the teachers in school in those days, they would ask you what you had for breakfast. And you would have to have an inspection of your hands and make sure you had a handkerchief. But these kids, in Ray's group, would lie beautifully about what they had for breakfast.

RS: Yes, all we'd have is a bowl of coffee and a piece of bread.

AKM: What did you say you had?

RS: Well, they'd ask, "Did you have milk and fruit and cereal?"

"Oh, yes, teacher." I was embarrassed to say otherwise. Some of my cohorts for breakfast still have coffee and a piece of toast, dunk the toast in the coffee, that's all they have—force of habit.

[Interview suspended for break]

AKM: Ray, you were talking about your early years on the bench in Toronto and how you introduced the community service order into the justice

system here, and the Jurors Act amendment, you were a force behind it. What other issues or achievements do you feel you had in your judicial career?

RS: I think there are three things that I feel very happy about in my time as a judge. One was, as you mentioned, the community service orders and the other was leading to the amendment of the Jurors Act which put women on the same footing as men. Thirdly, I'm very pleased to have been able to acquire an ability in the French language to preside over French language trials, both jury and non-jury. I never studied French in high school nor university, but I did take French lessons as a judge. I did spend three months at the law school of the University of Laval in French and I was able to preside over trials in French. So I'm very happy about those three things.

AKM: What was your motivation in learning French?

RS: Well, I was a federally appointed judge under the Constitution. We have two official languages in Canada and I wanted to be able to preside in both official languages. I believe in bilingualism as an official position in Canada. So I was very happy to take advantage of the opportunity to become bilingual, functionally bilingual.

AKM: Is there a large Franco-Ontario population in the Sault?

RS: No, there is not. At one time there was but in the Sault itself, there is a very small minority. In the district of Algoma, of which the Sault is the district seat, there are more Francophones. For example, north of here, in Wawa,

Dubreuilville, Blind River, there are more French speaking people than in Sault Ste. Marie.

AKM: So when you came back up here as a judge in 1976, how was that different from Toronto: the north, being judge up here in Algoma?

RS: Well, we didn't have the huge variety of cases. In Toronto, you had to deal with cases arising out of the operation of the airport, smuggling, drug trafficking, more serious crimes, hold-ups, murders. In smaller towns, such as the Sault, you don't have the volume, or the variety. However, we're busy. I mean, it's not a question of not being busy. When we first came here, I was the third judge appointed to the district and now they have four. And they're busy, because the Family Law Act changes require a lot of adjudication and Charter cases where people raise Charter arguments before a trial begins. The judges are busy but we don't have the same variety as you would find in larger centres such as Toronto.

AKM: What about Aboriginal accused? Do you have a comment about justice for Aboriginals in this area, or the history of it?

RS: Well, we have a number of reserves in the district of Algoma. There are two right at the city limits of Sault Ste. Marie. So we do get a number of accused persons who are Aboriginals, First Nations people. And the further west you go in Ontario, right to the Manitoba border, I believe that the majority of people in custody are Aboriginals. The reasons for that are probably, according to the people who have made studies of this—poverty. Poverty is big cause of

crime in any community, whether it is Aboriginal or non-Aboriginal. Along with poverty you get substance abuse, alcohol and other drugs, then you get violence introduced into the equation. Then, in order to support these negative habits, you have theft being committed and crimes of that nature. So, I believe that statistically, there's a disproportionate number of Aboriginals in custody in Northern Ontario than you would normally expect.

AKM: You mentioned sentencing circles. Did you utilize those?

RS: No, not directly. At one point I was asked by the Minister of Indian Affairs to suggest a court model for Aboriginals. The problem with giving autonomy to First Nations reserves, is the question of independence. If the chief can fire the judge or the Crown attorney, then you don't get independent justice. There are cases where injustice has been committed because of that power to fire. I mean, how many policemen would arrest the mayor of the city for impaired driving or speeding if that mayor could fire the police officer? It's a serious question of independence of the judiciary.

The suggestion I made to the Minister of Indian Affairs was that anyone charged with an offence on the reserve would have an option to be tried on that reserve or in Sault Ste. Marie, which is the court location for the district of Algoma. If we had the case tried on the reserve, it would satisfy the element of deterrence; because, right now if someone is charged with an offence on the reserve and it's tried in the Sault, it may or may not get reported, probably won't get reported, unless it's a very serious case. So the deterrent value is missing.

What I proposed, and I had talked to a provincial judge and he was going to join me in this respect, that we would attend the reserve as often as necessary, conduct a trial there, using the Crown attorney's office so the question of independence of the judicial would not be an issue. Then if the person was convicted, I proposed that we'd set up a sentencing circle of elders in the community and respect their recommendation. We're not bound to follow because the criminal law says that it's the judges decision. Even juries don't have the ultimate say. But I have asked juries in my term of office to suggest what I should do. I would certainly give very serious consideration to the recommendation of a sentencing circle. We would incorporate that in our system of trials on the reserve.

Unfortunately, the proposition was turned down. The minister of justice said it was not popular and not wanted. I guess people wanted full autonomy. You have to solve the problem of independence.

I'm thinking of a case of a young boy named Cardinal, out west. It caused quite a stir at the time. There was a documentary made about it.³ This child was placed in foster care. The First Nations people demanded that First Nations children be placed with First Nations people. There was long-standing tension between the reserves and the Children's Aid Society. I think Manitoba or Saskatchewan tried to do that. They placed this child, Cardinal, in a number of foster homes but they were very unsatisfactory, meaning there was actually

³ Alanis Obomsawin, "Richard Cardinal: Cry from a Diary of a Métis Child," 1986.

abuse alleged. Finally, there was one foster home where the abuse was really intolerable. The reserve had their own social worker because they didn't want a Children's Aid worker. She talked to the boy and looked into the situation and was convinced that the child had to be taken into protection and moved. I believe the foster parent was related to the chief, and then the chief and council refused to allow the boy to be moved. In desperation, she went to the Children's Aid Society of the province (they have jurisdiction over the entire province with reserves included). They moved the child or were about to move the child, but it was too late—the child committed suicide. Independence is fine in theory but you have to have the safeguards. You have to have the independence, the safeguards so you don't have political interference in any good system, judicial or otherwise.

Before becoming a judge, as a lawyer I had quite a few dealings with Aboriginal people. I was involved with the formation of a folk arts association, originally to celebrate the hundredth anniversary of Canada's centennial, Canada's creation, '67. I worked closely with Aboriginal people in nearby reserves. I had, I felt, a good connection with them. And there is certainly guiding directions from higher courts that if you have an Aboriginal person to be sentenced you have to take into account the cultural differences and the deprivations, and not treat the person the same as you would a spoiled kid from a rich home in the city.

MKS: They call that Gladue.⁴

RS: Gladue was the case where the pronouncements were made.

RS: They do receive special treatment in that sense. I think those who are in jail, for the most part, deserve to be there. But, I think it should be a last resort, not the first resort, for the courts.

AKM: For anyone.

RS: For anyone, especially for natives.

[End of session; see transcript of second interview, 2 October 2011.]

⁴ *R. v. Gladue* (1999) 23 C.C.R. (5th) 197.

SECOND INTERVIEW WITH THE HONOURABLE RAY STORTINI

For the *Diversifying the Bar: Lawyers Make History Project*

Law Society of Upper Canada

Interviewee: Honourable Ray Stortini (RS)

Interviewer: Allison Kirk-Montgomery (AKM), for The Law Society of Upper Canada.

Mary Kay Stortini (MKS) present during part of the interview.

Interview Date: October 1, 2011

Location: Home of Ray Stortini, Richards Landing, St. Joseph Island, near Sault Ste.

Marie

Transcribed by Planet Shift Inc.

[Transcript has been edited by Allison Kirk-Montgomery to correct errors, and to remove false starts and extraneous material.]

AKM: Well, good morning.

RS: Good morning.

AKM: I'm Allison Kirk-Montgomery and you're Ray Stortini, and we're here on behalf of the Law Society's *Diversifying the Bar: Lawyers Make History Project*, picking up where we left off from in April. Today is October the first, a beautiful sunny day here at Richard's Landing. After reading the transcript of our earlier interview, Ray, which I think is full of interesting and valuable material and will be appreciated in the future, I have a few questions, especially on the relationship between your Italian, or Italian-Canadian heritage, and your career, and also about your last phase of your judicial career, which is the longest phase, too. You were thirty-three years a judge. Maybe we should start there because that's where we stopped.

RS: Okay.

AKM: You said that one of the achievements that was most important to you in your judicial career was learning French and applying it in trials.

RS: Yes.

AKM: Can you talk about that?

RS: I was appointed in November of 1971. We moved to Toronto over the Christmas holidays and enrolled our kids in a school so they could start right after the new year. After a few months, I got to know my way around the courthouse and met some of the judges working in Toronto. There was one particular judge, an older man, Judge Farquar Oliver. He was one of my

favourites. He was a very wise old judge and he told me about a program put in place by the federal government to offer an opportunity to federally appointed judges to learn the French language. I thought about it and I said, 'Well, I'm federally appointed. In Canada we have two official languages and I think I should make an effort to be able to answer any requests from people whose first language is French.'

I had never taken French because I didn't go to a regular high school and didn't take it in university either. I found out that they will take you in at zero. They'll test you to see if you can handle a second language and then see what level you're at, then start you. I started to take French in the seventies. I enjoyed it very much. It started off as two weeks in the summer and two weeks in the winter. I made fairly good progress. You learned basic French then you learned legal terminology, then popular French because that's the language that witnesses will speak. I had progressed to close to the final stages.

They had a program as well, that when you reached a certain level, according to your professors, you could arrange to attend the law school at the University of Laval in Quebec City. In that trimester, you could just monitor classes at the law school or you could write the exams. There were four other judges from across Canada that had taken the course. I'm not sure if any of them had tried the exams. I enrolled and spent three months in

Quebec attending Laval law school and I lived with a francophone family. I insisted they correct my French and we talked nothing but French for three months. It was great.

AKM: You passed your exams?

RS: Oh yes, I passed the exams. They gave you credit for it and said, "If you come back for a year you can get your LL.M, your Master's of Law, in the French language. We'll give you credit for the three subjects you've taken." That was my plan to do that. I enjoyed it. None of our professors were actually practising lawyers. When I was going to Osgoode Hall Law School, some of our better teachers were practising lawyers. One example would be G. Arthur Martin. He came in and taught us criminal law. He was the master. Every once in a while the professor would get stumped by a question from the students and he would turn to me and said, "Can you help us out?" I was always able to give a concrete example where that particular law was involved and the kids, the students never forgot it.

AKM: In French too?

RS: In French. It was all in French. I had to get up and give a presentation extemporaneously on the particular subject. There were two sections of criminal law and the other section heard about it and thought they were being disadvantaged. The teacher in that course insisted I spend some time in his

class and act as a resource person. The law students had a section of the cafeteria at Laval University where they had their coffee breaks and lunches, and they would just surround me and literally pick my brains. I was impressed with the calibre and the intelligence of the law students. I don't remember feeling that way when I was going to law school, maybe because I was there!
[Laughter]

RS: They just were so hungry for knowledge. It was interesting. I passed the exams and I had the three credits. Whenever I had a chance like a PD day or a holiday I would go to the courthouse. This was what the judges who had taken this program would do, divide the time before and between classes and the courthouse. I got to know some of the judges very well and I enjoyed that part of it because I would pick up the popular language, the language of the witnesses. In one particular case, the clerk called the court to order, and I understood what he said. The judge came in and spoke about the case with the lawyers. I understood what he said, and I understood the two lawyers. Then he called the witness, a lady, and she just spoke so rapidly I didn't understand a word that she said. I said, "My gosh, you know, I'm not going to get anywhere." Then the judge invited me into his office for coffee at 11:30 and he said, "What do you think of our *procès*?" I said, "I understood what you said and the clerk and the two lawyers but I didn't understand a word the woman said." He said, "Neither did I."

AKM: [Laughter]

RS: He says, "She wanted to talk. Somebody had subpoenaed her. She had nothing to add to the case, she wasn't there [as a witness] but I thought since she came all this way, I'd give her five minutes and let her talk. Besides that, I didn't know what she was saying." That made me feel a little better!

AKM: [Laughter]

RS: That was good. I enjoyed that. When I got back to Toronto, I continued taking lessons with a few other judges in the courthouse. We had a teacher come in at nine o' clock in the morning for an hour. I received a transfer, which I had applied for, to come back to Sault Ste. Marie in 1976. After being at Laval University, I thought I should be able to do some work in French. I started hearing motions in French and also small claims.

The first small claims case I had was in Elliot Lake which has a sizeable French speaking population. It was a backing up case in a parking lot. I listened to evidence. I prepared myself, learning all the parts of the car and so forth. When the police officer, who was French-speaking but he had not prepared himself with the parts of the car and was not able to supply the words for the glove compartment and trunk. I understood what the lady was saying and the other driver too. I made a decision which ended up being against the lady who asked for the trial in French. A week later I met her

lawyer in the courthouse in the Soo. I asked him about any feedback to our French *procès* and he said, "Well, you know, your honour, when you have a trial, the winner thinks you're a genius and the loser thinks you're a bum." He said, "But she said to me after, 'Well the judge shouldn't have found me negligent, but at least he's bilingual.'"

AKM: [Laughter]

RS: They didn't appeal so I felt good about that. I started hearing trials in French. It was a challenge. There was a jury case and the person asked for a trial in French. No other French speaking judge was available in the region, so I took it and it was all right. There are some precedent charges prepared by French speaking judges, just as we have it with English speaking judges preparing model jury charges, and you add to it particulars from the case you were working on. We got through that all right. Never once was I appealed, so I feel that we did at least a minimum to give a fair hearing. I felt very proud about that. It was more work, of course, but I think it was worthwhile. I think since we are in a bilingual country officially that federally appointed judges should make an effort to understand something of both languages, not necessarily to be able to try a case but at least if a witness shows up, to be able to help the witness. When I was in Elliot Lake in the small claims court, they have a long list for the day and the little court room was filled with litigants and witnesses. A court situation is very tense. I walked in and I

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bowed to the lawyers and the audience as is the custom. (That custom seems to be dying out but I thought that was a good custom when I was a lawyer and I think it's a good custom as a judge.) I bowed and I said, "Bonjour!" and I could see everybody in the courtroom thinking, "Oh I'm not going to make a stupid mistake in English and then say the wrong thing." A couple of times they asked me if they had said the right word. They tried to speak in English but when they couldn't they spoke in French. They just felt at ease that the judge could understand if it came to that. I felt it was worthwhile on my part to have taken those years of study. Trouble is, since I retired in 2006, the opportunity to speak French has diminished. I've concentrated more on Italian, trying to bring myself up to a level where I can correspond and speak to my relatives in Italy in Italian—which seems to be working. My French has taken a backseat right now. If I have a opportunity, I will speak French but the opportunity isn't there. Algoma District, of which Sault Ste. Marie is a part, has a sizeable French-speaking population, for example Wawa, Elliot Lake, Blind River and north, Hornepayne and those other little towns, but in Sault Ste. Marie there's not a large francophone community. The opportunity is not there and is less now that I'm not on the bench.

When I first got here there was a court attendant named Levesque. I said, "Oh boy, I have a chance to practise my French." I said to him, "We have to

speaking French when we meet." He said, "I haven't spoken French in thirty years." I said, "How come?" He said, "When I was growing up, I tried to speak French and I was told to speak white, you're in Ontario now. That kind of inhibited me." I knew what he was talking about but I said, "Well, Mr. Levesque, it doesn't matter what other people say, you and I are going to speak French." As soon as I walked in the hallway, he'd see me and say, "Bonjour, monsieur le juge." I'd say, "Bonjour, Monsieur Levesque." He was no longer inhibited because we had something in common. I think that whole project was worthwhile. I'm really happy about it.

AKM: That is interesting, that his comment about being “white” resonated with you because that was your sense too.

RS: Yes, because my mother never really learned to speak much English. Part of our tasks as children were to interpret for her whenever she had dealings with doctors or any professional or business people who were not Italian speaking. I was embarrassed and reluctant to speak Italian. I must have been made to feel that. I think it was much the same as Mr. Levesque experienced. You know, you're expected to speak English.

The people I lived with in Quebec City, Mr. and Mrs. Parent, never spoke a word of English. I came home from school one day and walked in the door.

He was on the phone and he was speaking perfect English, as it turned out,

with my daughter-in-law, who was living here at the time. When he finished talking to her and I had talked to her, I turned to him and said, "Mr. Parent, I didn't know you could speak English." "Oh yes." he said. I said, "Where did you learn?" He said, "In the army, in World War II. For some reason or other, they didn't send me to the Quebec regiment, Royal 22nd. I was sent to Ontario where they needed reinforcements. They housed us at the CNE, in the Horse Palace, and some other buildings were turned into barracks. I was told, 'Speak white, you're in Ontario now.' He said, 'That wasn't very nice, but I learned to speak English and got along with everybody. When the officers said something I understood what they said, and I haven't lost it.'" He went through that too.

AKM: He did too.

RS: Despite his experience, he was happy to have learned English but he wasn't resentful of not being readily accepted in Ontario until he learned to speak English. But he was a staunch federalist. He always wore a maple leaf on his lapel and whenever conversation come up, I could see from his comments and his opinions that he was a staunch federalist. He was not embittered by that. He figured, "Well, you know if English people come to Quebec, they probably feel disadvantaged not being able to speak French and that happened to me." But he said, "I overcame it."

AKM: What is the state of your written Italian?

RS: Italian? I write to my relatives in Italian and I email them in Italian.

AKM: Did you learn that as a child?

RS: My siblings and myself, we spoke Italian to our parents but English to one another at the table—

AKM: Even in the home?

RS: Yes. At the table, we'd turn to one another and speak English but when our parents said something, we'd answer in Italian. We spoke both languages all the time we were at home. When I left home as a young adult, when I went to university and law school and then working in Toronto, the opportunity to speak Italian diminished. But I've taken courses and I've read grammar books and I make it a point to make it to Italy every two or three years. My relatives tell me my Italian is improving. I have no trouble understanding what they're saying but sometimes, searching for a word, I might pick a French word instead of the Italian word! [Laughter]

AKM: Your interest in things Italian, the language and the culture, has that been life-long or more as an adult?

RS: I never thought of it when I was growing up. When I started taking French when I was a judge, I was asked, "With your Italian background, why wouldn't

you put the same effort into perfecting your Italian?" Which was a good question. I thought about it and the conclusion I came to was that—you have to recognize the concept of diaspora. When the Jews didn't have a homeland in Israel they had to keep the concept of the Jewish homeland alive. When the Ukrainians came to Canada and Ukraine was under the domination of the Russians, the Ukrainians out west felt a moral obligation to keep the Ukrainian language and customs alive, and as a matter of fact, they did. They have opera, and they have music and dances out west. When the Ukraine achieved its independence from Russia, it became lawful to practise your culture. But they had lost it. People from Winnipeg and western Canada went to Ukraine to teach them things that their parents had taught them in Canada. There was a diaspora and they felt a moral obligation. Same with other countries under the domination of the Russians, those who were living away from their homeland had to keep this concept alive. But the Italian language is alive and well, living in Italy. It doesn't need me to keep it safe and secure. There wasn't that pressure.

AKM: You didn't feel a personal responsibility?

RS: No I didn't feel a personal pressure. It was a convenience. There's a whole culture there I have since appreciated more than ever, of music and art. I was not able tap into it until I learned a sufficient amount of Italian.

AKM: Did you use much Italian through your criminal practice?

RS: I had a few Italian speaking clients. Yes, that helped. I could understand what they were saying and make a decision whether we needed an interpreter or not.

Once, in court, hearing a case—this old Italian man who didn't speak too much English went to a neighbourhood bar in the West End of our city. Two young men showed up and the place was pretty well full. The bartender said, "There's a table with two chairs but there's a gentleman sitting there. I'll ask him if he minds if you sat with him." He did and the old man said, "I don't care. Sure, they can sit here." They sat with him and it turned out that one of the young men had an uncle who lived nearby, whom he visited once in a while. The old man said, "Next time you see your uncle, come over to my house. I live on such-and-such a street, this is the number, come over and you can have a beer or coffee or something."

The next Saturday morning, the two young men showed up. They were given a beer each. One of them asked to use the bathroom. One of them asked to use the bathroom. (They were both charged with theft as a result of this encounter). The old gentleman showed him where it was. But he seemed to be taking an inordinately long period of time. The old man went to see what was happening. He found the guy in the host's bedroom with the pension

cheque belonging to the old man in his hand which he was stuffing into his pocket. The old man called the police. The police came right away and tracked them down. They both were charged.

[In court], they brought an interpreter with them, not a qualified registered interpreter, just a neighbour who could speak English and Italian. I have since convinced one of my Italian teachers to become certified as an interpreter as a result of the incident.

Let me explain this. The word for 'him' in Italian is 'esso' and the plural is 'essi.' The Italian guy spoke and his enunciation wasn't the best. I could understand what he was saying. The lawyers would ask questions and neither one of the lawyers were Italian speaking, but I could understand everything that was being said. The Crown attorney asked the witness "How did you meet these people?" and, "What happened when they came to your house?" He said, "They came to the door." The interpreter said this in English. "They sat down. I gave them a beer each." Then he said in Italian, "and then he asked to use the bathroom."

But the interpreter used the plural. Instead of saying 'esso' he said 'essi':
"When they didn't come back I went to see and they were in my bedroom. They had my cheque. Then I called the police and the police arrested them."

I said to counsel, "There's something bad going on here. There a possible miscarriage of justice. With all respect to the interpreter who's trying to help out, that's not what the man said. Let's go back and do it all over again."

I said to the man, "How many came to your door? Put up your fingers as well."

He said, "*Due.*"

I said, "Interpreter, what did he say?"

"He said two." Everyone could see he said two.

"How many sat down at the table?"

He said, "*Due.*"

The interpreter said, "Two," in English.

Then I said, "How many went to use the bathroom?"

He said, "*Uno.*"

The interpreter said, "One."

"How many did not come back?"

"One."

"How many did you find in your bedroom?"

"One."

"How many had the cheque?"

"One."

As a result of that, the Crown readily agreed that one guy that had the cheque was convicted and the other was not. But he could have been convicted if I hadn't understood what the witness was saying.

I was told of a case by the Chief Justice of Québec. It was in French. The interpreter was not really highly qualified. It was an accident case. A man was driving and he came to a stop sign, looked both ways, pulled out and there was an accident. The man was telling his side of it, that he came to a stop sign, he looked both ways. In Quebec, the word '*chance*' doesn't have the same meaning as in English. The word '*chance*' in French means 'opportunity' as well. He says, "I looked both ways, nothing was coming, I had the opportunity (*j'ai eu la chance*) to make my turn." The interpreter said, "I looked both ways, I took a chance to make my turn."

One [translation] means he's completely in the wrong, and the other means he may not be. That's an example of how a little bit of French sometimes can help. Anyway that made me feel good. I don't know how we got on this?

AKM: We were talking about your knowledge of Italian and how it affected your career.

RS: It didn't, not being an official language. People often say, "Why don't you have Italian trials and Polish trials and German trials?" I say look at the history of Canada. The French Canadians were guaranteed by the Quebec Act that the French language would be protected. There was a reason for that: the English wanted to take their army out of Canada to fight Napoleon. The Americans had their greedy eyes on Canada. (It turned out they did try several times.) The English asked the French Canadians, "What do you want to stay with us?" They said, "First of all, we want our language guaranteed, our religion guaranteed and we want to keep our civil law which is the European civil law which is based on the old code Napoleon, which is also based on the old Roman law. We want that because we're familiar with that. But we like the English criminal law. Can we have the English criminal law, the French civil law and guaranteed rights for language and religion?"

As a matter of fact, we had religious freedom in Canada before they had it in England. The English passed the Quebec Act of 1797 guaranteeing these rights. That's why they're entitled to have French as an official language. There's no such guarantee [for other languages]. If you go to Norway, you can't expect them to give you a trial in English. When you're in Norway, you

do what the Norwegians do. You should be entitled to an interpreter, of course. That's how that was resolved.

AKM: When you were young and living in the West End, do you recall people of the community going to court, or discussions about how to manage it? How was it done?

RS: In 1912, the society known as the Guglielmo Marconi Society was founded in Sault Ste. Marie. They took the name of the discoverer of wireless telegraphy. It really was a settlement house. It wasn't called that then because it's a name that came up after World War II, when we had large numbers of immigrants. One of the things they did was a mutual benefit society. They had a health plan and they also had a pre-paid medical plan. They had a society doctor so if you were sick, the society doctor would look after you and the society would pay for it. A lot of immigrants were here. They all came over as young men with no family here. Some were killed [in accidents] at the steel mill or on the rail road. The Marconi Society had arranged with the church for a section of our cemetery to bury these people who had no families. They also provided interpreters for people who were trying to get their citizenship or had any dealings with the court or with the school board. They provided people who had been here longer. They provided interpretation services.

AKM: What about lawyers?

RS: There are a few Italian-speaking lawyers in the Soo, not many. The most outstanding one later became Justice I. E. Vannini. His parents, like my parents, came from Italy. Judge Vannini was born in Canada as I was. He had a good background of Italian and he was a role model for a lot of us.

AKM: Including you?

RS: Yeah, yes.

AKM: I know he assisted you in terms of your career, recommended you—

RS: He was asked, as judges are with regard to candidates applying for a judgeship, "What's your opinion of this person?" He gave a very favourable report.

AKM: Would he have done much of the criminal business? He'd be about 20 years older than you?

RS: Yes. When I started practice he was still in practice.

AKM: For a few years yet, I think?

RS: Yes, and shortly after that he was appointed to the bench. I had a few cases in front of him. As a judge you get to know the lawyers, which ones have done their homework, which ones have not, which ones are out just for the

notch in the gun belt or those who are willing to donate some of their time for *pro bono* cases. Judges have a pretty good idea.

There's a committee in Ontario and one for federal appointments and they'd call me up and say, "A lawyer in your area has applied to be made a judge provincially or criminally" and they'd ask questions. I guess what they'd want to know is, is the guy a drunk? Then he's going to embarrass the bench. Or is he a womanizer, going to get into trouble? Or incompetent? They want to know that. I'm not aware of any person being appointed to either the provincial bench or the federal bench that was not approved of by the Canadian Bar Association. They have a judicial appointments committee. There's also a committee headed by Professor Ratushny at the University of Ottawa Law School that would give a recommendation. Then they'd ask the local bar, besides doing the regular police checks. Then they'd ask the judges. I'd answer their questions. I'd try to be truthful.

AKM: Difficult, I imagine, sometimes though.

RS: I tell people, if you put my name down as a reference, I'm going to speak the truth. I'm not going to say you're brilliant when you may not be, you know? The point is that I think I got a good recommendation from Judge Vannini. What happened was that when Otto Lang was the minister of justice and after him, John Turner, before that time, most of the judges were appointed

from Toronto Bay street. They came to the conclusion that we should have other people on the bench besides Bay street lawyers. The Minister of Justice asked the chief justice of each province to send in names of potential candidates from other backgrounds besides Bay street. The Bay street fellows had their own pipeline and very strong political connections, whereas in smaller towns you don't have that that pull. They asked the Chief Justice to contact the judges, to send in names of people that they felt would be good candidates. The Chief Justice then asked all the judges. In this case, Judge Vannini said [to me], "I've been asked to send in a list of names of people that I think would be suitable for the bench. Could I put your name in?"

I said, "I'm not really interested in a judgeship at this time but maybe five or ten years from now—sure, go ahead." Within six months I got a call from the Minister of Justice saying, "Would you accept an appointment in Toronto?" There were no Italian speaking judges in Toronto at that time. I said, "Well, can I have some time to think about it?" He said, "You have until tomorrow at three o'clock—that's when Cabinet meets." I went home, talked to my wife and we thought if we turned it down, we may never get another chance. We decided we'd accept it and we did.

AKM: You think that it was your Italian heritage mostly as opposed to your different class background?

RS: Both. That's what the minister of justice was looking for. He wanted diversity, not necessarily [someone from] the business class, the professional class. He wanted diversity ethnically as well as by occupation.

AKM: Were your parents still alive at this point?

RS: No. My father died in 1960, the year I graduated.

AKM: Was he alive when you were called?

RS: Yes, he made it to my graduation at Osgoode Hall. My mother lived until 1980 and she was alive when I was appointed in 1971...[Discussion of political career not transcribed as described in earlier interview]

AKM: When you went to Toronto, did you feel yourself in any way an advocate for people of diverse backgrounds? It's tricky—

RS: No, I don't think so, but I had a certain empathy. Some of my colleagues, both as a lawyer and as a judge, speaking to a person who didn't have a great command of the English language, would almost shout at them. You want [the witness] to say, "Look, I'm not hard of hearing. I just don't understand the English language." I think I had more empathy that way. You have to try to be fair. I must say, I didn't get many cases involving Italians in Toronto at that time. I like to think maybe they were a little bit more law-abiding. There were about thirty of us on the county court bench in Toronto

when I was there. You'd get a diversity of clients. No, I didn't get the feeling that any particular litigant needed any more than any other litigant. You try to be even-handed.

AKM: You didn't feel a conflict between your identity as an Italian Canadian and the legal culture?

RS: No, I never felt that.

AKM: As a lawyer did you?

RS: No.

AKM: You mentioned that the criminal law is what really attracted you in the beginning, and you wanted to fight against injustice and so forth.

RS: [Laughter]

AKM: Why are you laughing?

RS: Well, I'm thinking of Don Quixote. I think I'm one of the few people who read *Don Quixote* straight.

[Laughter]

AKM: Did you do that as a young man?

RS: Yes, I was very young. I was an avid reader. I read *Don Quixote*. He was a hero but some would consider him a buffoon, you know? Tilting at windmills.

AKM: But you thought that would be a good way to spend a career?

RS: Oh yes. Well, I changed my mind. I went to university to become a teacher but in my second year, I decided to switch to a university course that would lead me to law.

AKM: Because of this, partly? This sense that you wanted to—

RS: Yes, I thought it was just great that you could fight for the rights of people. I thought of being a teacher. I lived in a residence in London, Ontario while attending University of Western Ontario. There were fifteen other guys living there. We had a reunion every year and graduates would come back to London and have dinner with us...I got to know them well. When they came back, I'd say, "What's it like, being a teacher?" A lot of them were disappointed. They felt that at time that you weren't left alone to be a teacher. You had to put up with a very demanding parent-teacher organization where they thought their ideas of education were better than yours. Your supervisors would not necessarily back you up. The principal, I suppose, didn't like the idea of this powerful parent-teacher organization breathing down his neck, so he didn't always support the teacher. A lot of them were disenchanted, depressed about it. I'd talked to some guys who had gone on

to law. They were much more cheerful and excited about what they were doing. It appealed to me more than fighting with the parent-teacher organizations.

AKM: Did it sound a little bit like the steel mills but in a different setting, in the sense of control?

RS: It was. I've got some lifelong friends who had been teachers and they told me the same story. That if they leave you alone to teach, then you would put your heart and soul into it. One teacher told me that he actually ended up having a break down. He told the students at the beginning of the year, "You have two essays, one in the first term and one in the second term, and they're going to count for half the marks. You will not pass if you don't get those essays in." He warned those who hadn't done the essays several times during the year. Near the end of the year, he told them, "If you don't get those essays in, I'll have to fail you because it counts for half the marks, and unless you get perfect marks on the other half you only get fifty percent." Some didn't do it and he failed them and they appealed. Some of the students were from a minority group and they accused him of racial bias. He didn't get the support from his department head or from the principal, so much so that he ended up having a breakdown. That supports the things that people told me when I was at Western.

AKM: The independence of being a lawyer really appealed to you as well.

RS: Very much so.

AKM: You mentioned your brother John as a very strong model and someone you looked up to for his own particular fights and support of the working man.

RS: It was a strong union and he was a leader. Shop steward, trustee, delegate. He would tell me of some worker that was being oppressed by a particular foreman. He'd put in a grievance. I admired him because his own job might be at stake. They could always find ways to make your life miserable. He never aspired to be a foreman although he was asked a couple of times. You always worry about being on the wrong side of your employer who has all the cards.

AKM: Of course.

RS: But I admired his courage and his dedication.

AKM: What did he think of you becoming a lawyer?

RS: Oh, he thought that was great. He's got one son that became a lawyer and another son who's a probation officer. He thought that was great. He didn't have the opportunity to go to university, but he had the ability to go to university and take on a professional career, but there was no money.

AKM: There wasn't a program that benefitted you or allowed you in.

RS: No programs, and my parents couldn't afford to send two to university. He was a good person because of his tremendous sense of justice, to fight for justice for anybody that needed him, or came to him for help.

AKM: As far as you remember as a child, what did your parents think of the justice system? Was it a generally positive or negative feeling?

RS: Well, there were a few Italian families who came before the 1900's. My grandfather came in 1905 but there already were Italians in the Soo. They lived in one section called the West End and the other people in the city called it Little Italy. It was close to the steel plant because none of them had cars, and housing was cheaper. We felt we were in a goldfish bowl. Every time they saw the name of somebody in the newspaper who committed a crime or something, they felt embarrassed about it. I remember a colleague of mine in law school tell me that he's Jewish and whenever some big event happened in the world he'd say, "Howard! How's this going to affect the Jews?" "No way." "Are you sure?" "Yes." The Italians were embarrassed. [We already discussed the Napolitano case, where a woman killed her abusive husband in 1911]. My father drilled it into us, "Never blacken the good name of the Italians and never blacken the family name."

AKM: You mentioned that you didn't even know about this case—

RS: No.

AKM: When do you remember hearing about it first?

RS: Not until the producers came to the Soo to research it.

AKM: This is recently?

RS: Yes, four or five years ago.

AKM: You had never heard about it at all growing up?

RS: No. There were others. There was one murder but I guess it was treated as manslaughter because the man wasn't executed. There was a dispute over a card game. One accused the other of cheating. One drew a knife, the other drew a gun and one died. Then a brother of the guy who had died then shot the man who had done the shooting. Because of the provocation, he was convicted of manslaughter by the jury. He served his time. We knew all about that. There was one other manslaughter case. A local contractor had a yard where he stored his building materials. Somebody was coming in every night and stealing his bricks and his boards. One night he waited with a gun at an upstairs window and when the guy came in and started gathering stuff, he shot him. The man was killed and he was convicted of manslaughter.

AKM: What year is this?

RS: This was way before, it would be in the twenties or thirties.

AKM: You knew about these crimes?

RS: Yes, it was common knowledge. People talk, people were still alive. But nobody talked about Angelina Napolitano. I think they were embarrassed that a woman would kill her husband. Today she would have never have been convicted because of the battered woman syndrome.

AKM: I had read about the case before, but I had forgotten that a few months before she killed her husband, he had stabbed her nine times and disfigured her.

RS: Yes.

AKM: Of course it generated a lot of outrage from various groups all around the world including the Toronto Italian community who supported clemency on her behalf. The cases, killings that involved men were common knowledge. Do you think this was an issue about gender roles in the Italian community?

RS: I think so. I think the fact that a woman would kill her husband was just unthinkable.

AKM: So, you're a boy growing up with this set of cultural values—

RS: Yes.

AKM: —and then you become a judge in a different set. Were there parts of your Italian cultural heritage that you had to rethink, to become a good lawyer or a good judge?

RS: Of course, I wasn't alive in 1911. There were other bad attitudes at the time. There was an article and editorial in the local newspaper by the editor and publisher talking about this murder. His comment was, "What else do you expect from those hot-blooded Italians with their stilettos, lurking around the corners?" Today, he'd be run out of town. But nobody did anything about it at the time. If I had been alive at the time, maybe I would have felt the same way, I don't know.

I was a strong advocate as a lawyer for equal rights for women. I had a couple of cases before the Charter [of Rights and Freedoms came into effect], where I presented that and of course wasn't accepted by the judges at the time. One example—the Indian Act stipulates that if you are intoxicated on a reserve, that's a crime. For anyone else in Ontario, the Liquor Control Act says if you're drunk in a public place, it's a crime. That was the original crime. Since then it's been amended. The Criminal Code now says you can be charged with intoxication in a public place if you are a danger to yourself or someone else. You see? A double standard...

A police officer was looking into a crime. He went to a house to speak to a young man who was supposed to live there and he wasn't there but his mother was, sitting at the table. She was drunk, on one of our reserves adjacent to the Soo. He charged her for being drunk on the reserve. [That was the] double standard—a white person would not have been charged. She was referred to me by a mutual friend on the reserve. The court was being held in Bruce Mines. I said, "There's a double standard here." Well, [the judge] said, "That's the law. I don't make the law, I just apply it." He convicted her. He was a judge that would convict quickly but he would give such a lenient penalty that it wasn't worth your while to appeal. I said to [the client], "He's wrong. We should appeal this case."

She said, "I'll pay the ten dollar fine."

I said, "Look, I'll take the case. I won't charge you. I think this is wrong. You have to think about other people on the reserve."

She wouldn't do it. She wouldn't give me permission to do it.

John Diefenbaker came out with the Canadian Bill of Rights which was not as elaborate as our Charter of Rights and Freedoms, but there was mention there of equality. It doesn't specify details as the Canadian Charter does. There was a native in Yellowknife charged with the same offence under the Indian Act, being drunk on the reserve. They went to court and made legal

history because he was acquitted, because of the double standard, even before the Charter. We missed that chance.

AKM: You were young then. It was in the sixties, then?

RS: I was a lawyer then. In the sixties, yes...You take the case and you see what the law says about it and the precedents. Then you defend to the best of your ability.

AKM: Did becoming a judge or even a lawyer make you feel like an outsider in anyway in the West End?

RS: Oh no. When I was growing up, my parents and all the other parents respected the professional people: the doctors that came from our community, the dentists, lawyers, and in one case the judge, and also steel plant officials. No, they had respect for a person who has done well in one generation and moved from an immigrant family to become a doctor or dentist or lawyer. No, [I never felt] any animosity.

When I was invited to speak to a group or function, I never felt anything but respect. When I was in Italy, I was on a train and talking to this passenger sitting beside me. He finally asked me what I did for a living and I told him...His comment was, "Isn't that remarkable, in one generation the son of an immigrant can become a judge."

I said, "In Canada, you have that opportunity."

He thought that was really something. It is something.

AKM: Your dad must have been so proud that he saw you graduate, that's wonderful. What about your mum and becoming a judge that must have been—

RS: She was very proud, very proud. She always encouraged me to go to school. My dad—it was ambiguous. There was lots of work in the Soo at the time I was going to secondary school, between 1949 and 1953. During high school he kept reminding me that a lot of my schoolmates had quit school and had got high-paying jobs, earning as much as my dad earned. He strongly suggested that maybe I could bring some more money into the family situation if I quit school and went to work. My mother took the opposite view. She was illiterate. My mother never learned to read and write because girls just didn't do that in Italy at that time. They stayed home and helped the mother raise the family. She said, "No, I never learned to read and write. You have to go to school and do better than we've done." She was very encouraging. My dad was less encouraging because he felt the need for more income coming into the family.

AKM: He experienced terrible poverty and being out of work and so forth.

RS: During the depression, yes. From 1929 to 1939 when the war broke out, it was a worldwide depression. In the Soo, it was felt. My dad was out of work for six years. He felt the effects of the economic downturn.

AKM: You mentioned Anthony Vannini as being a role model and someone that the community respected. Were you aware of Angelo Branca at any point?

RS: Yes, of the Court of Appeal of British Columbia. At law school when I was taking French, there was a colleague on the Court of Appeal of British Columbia, by the name of William Craig. He practised law when Angelo Branca was a practising lawyer. Then they both sat on the Court of Appeal. So I'd heard about that Branca because some of his decisions were reported in the law reports. I never met the man but I knew of him. When Justice Craig told me he was a colleague and friend, I said, "Give him my regards."

There was a book written about Branca. Craig got him to sign it for me, so I felt a bit of a kinship with him. I guess he was the highest ranking judge of Italian descent. Of course, since then we have Frank Iacobucci who was on the Supreme Court of Canada. Up to that point, before the appointment of Frank Iacobucci, Judge Angelo Branca was the leading [judge of Italian heritage]. I was aware of that.

AKM: When you did become a judge in 1971, was it lonely on the bench? How was the collegiality?

RS: Well, there is always a problem. One of my colleagues, Judge Fitzgerald, was appointed to Rainy River. The lawyers there, probably reinforced by the local judge—there was distance—small bar, small town—there's distance between the bar and the bench. You don't want to be seen playing golf with a lawyer and the next day he's got a case in front of you and wins the case. The other view is, [as] Shakespeare said, "Do as the lawyers do, strive mightily but eat and drink together." Some judges say, "Well, I'm not going to be impartial. I'm not going to be impartial because I played golf with a lawyer."

But I never did that. There were a couple of lawyers that I had known for a long time. We saw each other socially once in a while but some of them didn't do court work. One or two did. I never felt any trouble judging the case on the merits. After all, it's subject to scrutiny by the Court of Appeal, anyway. [Favouritism] would be dishonest. I never felt a problem there.

AKM: Was that one of the reasons that you moved out here?

RS: No, I don't think so. No, but it made it easier. I moved out here because I love St. Joseph Island.

AKM: Of course. [Laughs]

RS: Yes. In Toronto, there's so many lawyers that I didn't know many of them personally. I did socialize with one or two judges that I seemed to strike up a friendship with.

AKM: As a judge?

RS: As a judge.

AKM: When you were appointed, you were appointed because you were different and going to bring different perspectives and skills.

RS: That's what I understand.

AKM: Did you feel different then, from the other judges?

RS: [Laughs] When I was told that I was going to be appointed to the Toronto bench, I knew the policy put in place by the former ministers of justice. I said jokingly to some of my friends, "If I'm going to be the resident ethnic on the Toronto bench, I'm going to look like one." So I grew a moustache!

AKM: Did you really?

RS: Yeah.

[Laughter]

AKM: What else did you do?

RS: In Toronto?

AMK: Yes. Did you feel did you feel different from the other judges?

RS: Yes, I think so. I wasn't invited to too many of their homes. I wasn't invited to their health clubs or anything like that. One or two yes, I was very close to them but the majority of them—I didn't feel like we were good friends. We respected each other and had coffee in the same coffee room but that's about it.

AKM: Like Osgoode [law school] all over again?

RS: Probably, yeah.

AKM: What was your life like? We haven't talked about law as a career and your family life through the years. You had four children?

RS: Yes.

AKM: Which part of your career was difficult, let's say, to fit with family life?

RS: As a lawyer. I wanted to be a good lawyer, so when I had a case I prepared well for it. At that time, the bail provisions of the Criminal Code were meagre and most if not all of the clients were in custody when they called you. They couldn't get bail. The Bail Reform Act came later. I was out many evenings.

Then I ran [for city council] and was elected. That meant I was away from home, with the practice, preparing cases, city council. I think that caused a bit of resentment with my wife, who is now my ex-wife. Yes, that had an effect. I didn't want to be (as I saw as a lawyer and as a judge) like some sloppy lawyers, ill-prepared. I didn't want to be one of those. I was well-prepared and as a result, the judges get to respect you. It has advantages. At that time, you couldn't tell the judge, "I've talked to his employer and he's going to take him back to work." You had to bring the employer. But the employers are busy. But I was allowed to do that...I never once misled the court. The judges know who you have to watch out for and who's word you can take instantly.

AKM: Reputation is kind of a short hand for quality?

RS: If you had it in a small town. If you hadn't got a good reputation you might as well move away. You'll never be very effective counsel.

AKM: Do you think that still applies to Sault Ste. Marie?

RS: I think so. The bar is small enough that you get to know everyone. In Toronto, a lawyer can pull a fast one, mislead you and just avoid you in the future. At that time, there were about forty judges (there may be more now) and they'd just avoid you. But here in a small town you can't. You hold them right down according to the book, you know? You want everything proved and you're more demanding of them when you don't feel comfortable with them.

AKM: We mentioned Angelo Branca. You moved down in 1971 to Toronto where there were more Italian lawyers. Did you feel any particular kinship with lawyers from Hamilton and Toronto?

RS: No. I didn't know any of them.

AKM: You didn't join the Canadian-Italian Advocates Society?

RS: No. I don't know if it was in existence at the time. I was careful not to get involved with any organization or club that might appear to compromise my independence and my impartiality. The appearance is just as important as the reality. I never was "pals-y." I treated them like anybody else. If they had a good case, well presented, and deserved to win, in my opinion, they won. If they weren't, I don't care whether he's from one group or another, I never had to struggle with that.

I didn't find it difficult to be impartial and look at the merits. I never had trouble making a decision, which was good, because some of my colleagues would agonize. I said, "If you don't feel that the guy is guilty, but you can't put your finger on it, there's something in the case that hasn't rung true. Your unconscious mind has picked it up but your conscious mind has not. The law gives you an out. It says, if you have a reasonable doubt, you should not convict. When you feel that badly, even though you can't put your finger on what it is, I'd say that's reasonable doubt. Just because you can't articulate

it—if you had time to go back and study it more, you might be able to find what it was. I never had that problem. I was always able to make a decision. Sometimes you need a bit of time.

AKM: What was the most difficult part of being a judge for you then?

RS: Family law cases. Custody. Playing the role of God. I found that difficult. I found that more difficult than criminal cases.

AKM: Choosing sides, instead of [finding] guilt or innocence?

RS: Yes. There was one reported case called Brown.¹ This lady had two kids, one was five and one was two. She had all kinds of health problems, to the point where she would have an epileptic fit and fall on the floor. The little five-year-old would try to revive her and try to get some food for the two-year-old. The two-year-old was not maturing. He was way behind, and so was the five year old. At different times, the Children's Aid Society of Toronto would place them in foster homes until the mother got healthy again. The kids would make progress, though they were far behind their age groups. Then the mother would regain custody and the same thing would happen. Her husband was completely unsupportive. Social agencies wanted to get involved to a greater extent. She was willing to work with them, but the husband wouldn't let these

¹ *Re Brown* (1975), (1976) 21 RFL 315, 9 OR (2d) 185 (Cty, Ct).

agencies into the home. Finally, the teachers complained that the kids were not maturing, that they were not socialized. So the Children's Aid took them into [temporary] wardship and then applied for permanent wardship to place them for adoption. They were now in foster homes.

There was no question that this mother loved her children. But she was incapable of looking after them, especially without the support of the social agencies and the support of her husband. I listened to all the evidence. It was really tough because she really loved these kids and it was not her fault that she was not well. At the end of the case I said to the lawyers, "I'm going to reserve my decision. I'll render my reasons in due course," which is the custom. The lawyer for the mother—I give him credit; he sensed what I was going to do. The evidence was fairly clear. He said, "Your honour, I would ask you not to just release your reasons. If you're going to take these kids from their mother, I want you to tell her why you are doing it. We should come back and you tell her."

I said, "That's a very good point. I will do that." I wrote my reasons out and made the children permanent wards of the Society. She came to court and I gave my decision. Of course, she was crying, "My babies," and all this, and it was hard.

AKM: You did it, yes.

RS: I did it, but I had to do it. I gave custody to the Children's Aid and they were placed in the foster homes. The decision came out in the law reports. Professor Frederick Zemans at the University of Toronto law school called me. He said that I had written a decision not like you when the lawyers are going to be reading it. I wrote it as if she was there and I was talking to her, which is what I did. I tried to keep to simple language.

I talked about Solomon, and the two ladies fighting over the child and the offer to cut the child in half. There was a case in the Ukraine. These children had lost their parents or were separated from their parents during the war. Now they were trying to reunite them. Two ladies said that one boy was theirs. The judge said, "Okay, I'm going to put the child in a chalk circle. Each of you will grab one arm and whoever is able pull the child out would—". One woman said, "I'm not going to do that and hurt the little boy." The judge said, "You're the mother."

I talked about that. I talked about the Bible. I did everything I could to convince her about love, you know? True love has a great degree of sacrifice and charity in it. Well, Zemans called me up and said, "[That was] the first judgment I've read that was in plain English. I used it as a model in my law class as to what a judgment should be like." He said, "By the way, what happened afterwards?"

I said, "I don't know. I'll find out and let you know." I called up the lawyer for the Children's Aid. "What happened on the Brown case?"

"Shortly after the case, the husband deserted the wife and she had a terrible attack, fell, hit her head, and she died. The foster home for the five-year-old girl (who'd made great progress in school) wanted to adopt her. They decided to take the brother too. They're both almost reaching normality." I called him back and told him. There's some states in the United States that passed legislation [that states] if the insurance policy of the contract is not in plain English, it is invalid. I kind of like that, you know?

AKM: Did that influence your future decision writing after that, to try to do the same?

RS: Yes, I try to keep it simple. I think you can hide yourself in flowery language or legalese. I always try to keep it simple.

AKM: It sounds like the judicial phase of your career has been satisfying.

RS: I often wonder, you know. I lost an election in the Soo. I was appointed to Toronto, then after five years I came back to the Soo. Before that, I had run to become a MP and lost. That was another thing—I really wanted to be a MP. I thought that social progress is better made through political action.

But when I look back, there are three things that I'm rather proud of that came out of my stay in Toronto. One was that I was able to institute the first community service order program, where you take people that are not dangerous and instead of letting them sit in jail at the cost of the taxpayers, you have them work for charitable organizations. That's worked fine since then. There's been millions of dollars of worth of labour put into charitable organizations. There's never been any real problem with the candidates. I was proud of that.

I was proud of being able to try cases in French.

Also—you know, you tell the juries, “You are the judge of this case. Your decision is final, subject to the court of appeal, like me. You're just as much a judge as I am.” But then I said [to myself], if I don't understand something the witness has said, I have the right to ask [questions, but the jury members do not. For instance, I can ask] “You said nine o'clock. Is that a.m. or p.m.?” (The lawyers forget to clarify it.) I started the practice, after the witness was examined and cross-examined and re-examined, that I'd turn to the jury and say, “Do you have any questions you'd like to put to the witness? Write the questions out.” They would. I'd look at it and give a copy to the lawyers and say, Do we require a *voir dire*? I don't want to object and look like we're preventing the jury from hearing the truth. They'd tell me whether we needed a *voir dire*. Like any other question, [you have to ask] is this a proper

question? Is it irrelevant? Is it hearsay?"...I'd hear their arguments and make a decision whether I'd allow the question. Most of the time, lawyers say, "No, it's fine."

I would put the question. I don't want the jury arguing with the witness. I'd say, "Witness, we have a question from the jury, where were you before you got to that corner? Did you make any stops? Was it 9 o'clock in the morning or 9 o'clock at night? Anybody else with you at the time? You have a restricted drivers' licence to wear properly prescribed glasses. Were you wearing them on that day?" I carried that practice on when I came to the Soo. I had the jury pass questions on to me and I'd put them to the witness. It didn't catch on. None of my colleagues were interested in that, and although I've been away now for five years, I don't think it's really caught on.

AKM: Why is that? It seems so sensible.

RS: I don't know. It's got safeguards in it. The judge might be afraid that they may ask a question that might reveal bias on part of the juror. But you prevent that by having it in writing. You [the judge] decide. You say to the jury, "I'm sorry..."

AKM: You can stop it right there.

RS: Yes. "... this is irrelevant whether he's ever had a driving offence. It has nothing to do with this case. You can't put that question to the witness." I

don't know. The Crown at first was a little reticent but they saw the reason for it, because sometimes they overlook a question. The juries liked it. They felt like part of the case. I was proud of that but it hasn't amounted to anything.

[Laughter. Recording paused for a break.]

AKM: Those are some of the contributions you've made to the justice system that you feel good about. [Recording stopped for phone call]

Over your career in the law, did you see yourself as an Italian Canadian lawyer or judge? How has your identity with relation to your original background changed over your life?

RS: As a lawyer, I had clients from all walks of life. I suppose today I would be called a 'poverty lawyer.' I didn't have any wealthy clients or corporate clients. I never turned down a criminal case. When I started practising law, there was no legal aid plan until 1967, but I never turned a case down. I'd say most of my criminal work was *pro bono*. But I enjoyed it so much. I was able to earn a living from my other work. I used to be an insurance adjuster before I went back to university. I was doing some motor vehicle accident cases which did pay the rent.

AKM: What did you enjoy so much about criminal law? Because so many people talk about how disillusioning it is, how frustrating.

RS: First of all, people that come to you are in deep trouble. Nobody is all bad or all good. I found something redeeming in just about anybody I dealt with who was a client of mine. They may have done a bad thing but that doesn't make them 100% bad. If you look at the background—as a judge you get the pre-sentence report—you find out that they had a terrible childhood, abusive parent or parents. Society now wants to punish them for something they've done as an adult. But where was Society when this little kid was being knocked around by a drunken father? I saw that side of it. I thought that just preparing mortgages and real estate deals wasn't appealing to me. I loved the challenge of court work.

The more you do, the better you get at it. I remember when I first started appearing in the courts I spoke too quickly. One of the court reporters who was taking it all in shorthand at the time, said, "You know, Ray, I got to tell you, you're speaking far too quickly. The judge is not getting it all. It's all falling on the floor. Slow down! I can't even keep up." I didn't realize I was speaking so quickly. It was nervousness. I made an effort to try and slow down. I think it was appreciated by the court reporters and by the judges. [Laughs] There's no point in making five good points in a matter of seconds if the judge is still on the first point! I try to tell young lawyers, "Take all the time you need." If the judge says something about, "Hurry up," you just say, "With a lot of respect your honour, may I be allowed to finish my argument?" What

can he say, “No?” It’s an automatic appeal. Be firm. Be polite but don’t back down. I tell the young lawyers that.

AKM: The same rule applies or the same observation applies, that you become a better judge as the years go on?

RS: Well, because of the experience, yes. You asked about whether I looked at the situation as a lawyer, as a judge, from the point of view of my ethnic background. I would say no. No. Clients came from all walks of life and so did the litigants. I was not very active in the Italian community. I’ve been more active lately. I’ve helped to rewrite the constitution for a couple of the clubs. No, I’ve never considered myself as an Italian lawyer. No.

AKM: Do you think the legal community saw you as an Italian lawyer?

RS: I don’t think so. However, the building that my law practice was in—I had a partner at that time. He became Justice Frank Caputo, so it was Stortini and Caputo. [Laughs]

AKM: Sounds Italian! [Laughs]

RS: Yes. [Laughs] On the bottom floor was a Trader’s Finance Company and the manager was Albert Herniak, who was of Ukrainian origin. He ran for city council and it was a very close race. I was asked to recount the ballots, which I did. He lost, but he never held that against me because I was just doing my

job, of course. He liked the way I was doing business. If a client applied for a mortgage and was accepted, he'd say, "Now you need a lawyer to draw up the papers." If the fellow had a lawyer, he'd say, "Well, go and see your lawyer." If the person said, "Can you recommend somebody?" He would say, "We use a firm upstairs, Stortini Caputo." One client said to him, "Do I have to use those wop lawyers?" He said, "Well, you do if you want this mortgage!" I wouldn't say that—That would be rare. I wasn't even aware of that and never knew it until years later when he told me.

AKM: You didn't feel [any prejudice because of being Italian] then?

RS: I don't think so, no. No. It didn't mean it didn't exist. I just didn't let it bother me or wasn't aware of it.

AKM: What about the other aspect, which is your working class background. Did you feel that that was a hindrance in any way to your career?

RS: Oh no, it was an asset. You understand what people go through, the challenges that a working class family goes through. You understand what motivates people. No, I never looked at it as a disadvantage. I looked at it as an asset.

[Pause. Mary Kay Stortini said to RS, "Tell Allison that story about the elderly gentleman who used to come in."]

RS: [Laughs] There was an old family friend, a friend of my parents. He was quite elderly when I was in law practice. He couldn't read or write. He knew I was practising law so every so often he'd call for an appointment. He'd bring an envelope full of stuff he'd received in the mail. I realized that what he wanted was for me to tell him whether this was important, whether that could be thrown out. [Before] he'd come into the office, he'd shave, put on a clean shirt—"Got to see my lawyer today." I alerted the staff. I said, "When Mr. Pacino comes in, let him sit there for a while with the magazines." He'd pick up a magazine. Of course, he couldn't read or write.

[Pause as all admire a deer in the garden]

RS: He would sit there and look at a magazine. Then, when he was ready to go, they'd say, "Mr. Pacino, would you like to take this magazine home with you?" He'd look at the pictures, and put it under his arm. I'd make him wait, and then have him come in the office. I'd go through the mail, "This is just garbage, garbage, this is your tax notice, you got to go to City Hall and pay this." Fifteen minutes, but he felt important. I understood, I understood that about him. It was the only outing he had. The fact that he would shave and put on a clean suit—so that was good. I understood where he was coming from because my parents were the same way.

[Anecdote about father's first paid vacation not transcribed, see first interview.]

AKM: Is there still a strong Italian community in the west end?

RS: No, because the originals, the first generation, the immigrants, are dying off, getting old, and a lot of children have lost some of the culture. They're just not interested. They wanted to become 'real' Canadians. Or they marry into another ethnic group and the kids are not raised with too much of the culture. It's dying out in that sense. Because there was very little immigration after the '50s, especially now with the European community. Until the recent economic crises, the Italians have prospered. I first met my relatives over there in 1969. They were in poverty. Today, at least two of them own shoe factories and they drive better cars than I drive. Their homes are better than what I have. People love Italian food, they love Italian wine, they love Italian shoes, clothing, olives. You see all the trucks exporting all this stuff to the rest of the European community. Of course, there's no trade barriers. They're hard workers. There's no reason for them to come here. My parents came here because there was no work. Young people had to find work if they want to get married and raise a family so they came to America. They came to the Soo because, at that time, there was lots of work here. Algoma Steel was starting up and the Algoma Central Railroad, Abitibi paper—and in 1895 they were building the canal, the Soo locks. The Canadian government was

actually looking for workers in Europe, and they specifically mentioned Sault Ste. Marie. A lot of them had relatives here. What happens is they send for their brothers, their parents and cousins and they all ended up in the Soo. Well, there's none of that now. I don't know of any recent immigrant from Italy. There's no reason to leave. They live better there. They have warmer climate, more beauty around and culture, and they earn a decent wage.

AKM: You mentioned earlier in our last interview too that your children didn't speak Italian.

RS: No, none of them do.

AKM: What about the grandchildren?

RS: Less.

AKM: Less? What about the trips to Italy? Are they interested in rediscovering it?

RS: Yes, my oldest son now and his wife are very interested. They'll probably come with us the next time we go.

AKM: Oh, lovely.

RS: Maybe they'll be prompted to learn a bit of the Italian language. My generation is dying out over there. Their children are the age of my children and it's time for them to make contact.

AKM: I think it's almost time for us to wrap up, Ray. This has been wonderful. Is there anything else you'd like to say?

RS: Oh, I think I've said enough, enough.

[Laughter].

RS: No, I think we've covered what I consider the highlights. Somebody else might disagree. I've really enjoyed being a judge. I've felt good about the work I was doing. I enjoyed being a lawyer as well. I enjoyed the freedom. I enjoyed the challenges. I don't regret being a lawyer and a judge. I think it's really enriched my life in many ways. I don't regret learning to speak French. I've found that enriched my life. Now I'm getting more in touch with my roots. I'm trying to improve my Italian so I can deal with my relatives and speak with them, and pass time with them in Italian. We write to each other, we email each other. I visit them all when I'm over there. I've never had any bad complaints except I wish my kids would show more interest in their heritage, but I think they will at some point. I hope I can help them in getting in touch with their roots.

AKM: Lifelong learning, right?

RS: Yes.

AKM: Thank you very much, Ray. It's been a very valuable and interesting session.

RS: You're very welcome.

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