



Memorial Service

Held in the Supreme Court of Illinois
at the May 2016 Term on the
Life, Character, and Public Service
of the Late Justice Thomas R. Fitzgerald

Wednesday, May 11, 2016
2:00 p.m.

Illinois Supreme Court
Springfield, Illinois

SUPREME COURT OF ILLINOIS
JUSTICES

RITA B. GARMAN, Chief Justice
Danville, Illinois (4th District)

CHARLES E. FREEMAN
Chicago, Illinois (1st District)

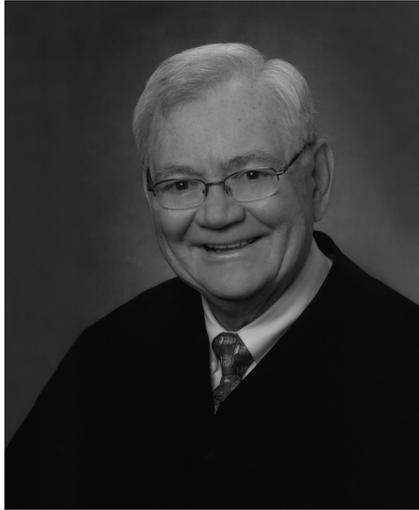
ROBERT R. THOMAS
Wheaton, Illinois (2nd District)

THOMAS L. KILBRIDE
Rock Island, Illinois (3rd District)

LLOYD A. KARMEIER
Nashville, Illinois (5th District)

ANNE M. BURKE
Chicago, Illinois (1st District)

MARY JANE THEIS
Chicago, Illinois (1st District)



Justice Thomas R. Fitzgerald
July 10, 1941 – November 1, 2015

At 2:00 p.m. on Wednesday, May 11, 2016, other business being suspended, the following proceedings were had:

CHIEF JUSTICE GARMAN:

Good afternoon, ladies and gentlemen. Welcome to the Illinois Supreme Court. I'm Rita Garman; I'm the Chief Justice and I'm privileged to preside at today's proceedings. Last November we lost one of the shining lights of our Illinois judiciary, Justice Thomas R. Fitzgerald. This afternoon we gather in his memory to honor his service and his life. On behalf of the Illinois Supreme Court, I welcome his family, his friends, and his colleagues to this celebration. It's a celebration of his life, his career, and his lasting legacy. Today's speakers will remind us of Justice Fitzgerald's many accomplishments with great integrity and impartiality and his dedication to the service of the people of the State of Illinois.

I'm going to add just one personal recollection of my own. Tom Fitzgerald and I were of the same generation, both having been

admitted to the Illinois bar in 1968. We became judges about the same time, and of course we became friends. He had been a member of the Illinois Supreme Court only a couple of months when I arrived in 2001, but he warmly welcomed me and was a source of constant support and encouragement. I still treasure the lovely letter he sent to me when I was elected to my first ten-year term on the Court. He said he was looking forward to having dinner together with me for the next ten years, and we almost made it, but we enjoyed many good times with our colleagues. I personally miss his steady presence and his kind and gentle spirit. To me he was a model of collegiality and cooperation. Now let me introduce to you the distinguished speakers that we have asked to share some thoughts with us today. I'm going to begin with my colleague, the Honorable Robert R. Thomas.

JUSTICE THOMAS:

Thank you, Chief Justice Garman. It is always challenging when we gather together to say our final farewells to a colleague. Today has a special poignancy because Tom Fitzgerald was not just my colleague and my friend, he was also my classmate: the Supreme Court class of 2000 when Tom Fitzgerald, Tom Kilbride, and I all joined the Court together. In fact, I was talking just last night with Justice Kilbride, reflecting on those first days on the Court when we three were learning the ropes, stepping forward slowly and cautiously, and looking to our colleagues for direction. In the sixteen years since, a lot has changed. Each of us in the class of 2000 has worn the mantle of Chief Justice and over time, little by little, we transitioned from rookies to veterans, charged no longer with receiving the Court's traditions but with preserving them and passing them on. Now one of us has moved on altogether, leaving behind this earthly court room for God's eternal throne room. Yet in all of this, and I know that Justice Kilbride joins me in saying this, something will always remain of the class of 2000, a unique brotherhood that transcends this room, this office, and this time. So Justice Tom Fitzgerald, Justice Kilbride and I honor you today as your colleagues and friends and, yes, as your classmates. We began our time

on this Court together, and today we close that time in the very same way together.

What follows may sound familiar to some of you. In November 2010, I spoke before a gathering of more than 500 attorneys, judges, and other public figures to commemorate the retirement of, or more precisely, the career of Tom Fitzgerald. With only minor modification and at the specific request of Chief Justice Garman, the remarks I delivered then I deliver again now. Because the words I spoke in 2010 are no less true and no less appropriate today than they were then, if anything they are even truer today as we look and celebrate not just the extraordinary career but the extraordinary life of Justice Tom Fitzgerald.

Tom, it is hard to believe that it is now eight years since I administered to you the oath of office for Chief Justice of the Illinois Supreme Court. That was truly one of the highlights of my career, a genuine celebration, and here I find myself again honoring you and celebrating you, your life, and the law. Only this time the celebration is bittersweet. For more than three decades, Tom, you served the judiciary of this state with honor and distinction. You enjoyed the universal respect of the bench and bar. As far as I know you were perhaps the only person to have both emerged from and retired from Cook County politics without having made a single enemy. That alone is a shining testament to your personal and professional character.

I remember the year that you took over as chief, my son Jonathan drove down to Springfield to observe the Court's oral arguments. The session that Jonathan watched that morning included some unusually complex and challenging cases, and it included sharp and penetrating questions from Justice Fitzgerald, which should surprise no one. From the bench Tom always demonstrated a keen understanding of the case, and the questions he asked inevitably got to the very heart of the legal issue confronting us. Later that day, after the Court concluded its business, I caught up with Jonathan and asked him what he thought. First thing out of his mouth: "Man, I totally had the wrong impression of Justice Fitzgerald." I asked him what he meant by that, and he said, "From everything you've told me about him I was expecting like a fraternity buddy."

That was Tom in a nutshell, wasn't it? To everyone he served with to everyone in this room who had the privilege of knowing him, he was a dear, loyal, and generous friend. He was our favorite story-teller, golf partner, dinner companion, confidante, and sounding board. He was a kind and gentle spirit who always looked for the best in both people and circumstance, yet at the same time he was a deeply serious lawyer and judge who approached his job with sobriety and wisdom that might be surprising to those who know him only outside the law. It was a wonderful and refreshing balance, and we who served with him on the Court are privileged to bear witness to it.

For more than ten years, Tom, I enjoyed the distinct honor of calling you my colleague and my friend, and for two years I had the genuine pleasure of calling you chief. I'm sad to see you go, and I hate to say goodbye. I can rest in the knowledge that I am all the richer for having served with you, for having learned from you, and for having walked ten years of my judicial life together with you. May the Lord now bless you and keep you. May the Lord make his face shine on you and be gracious to you. May the Lord turn his face toward you and give you peace, eternal peace. You were a good friend, Tom; thank you for everything.

CHIEF JUSTICE GARMAN:

I would now like to call on Justice Mary Jane Theis, Justice of the Illinois Supreme Court.

JUSTICE THEIS:

Justice Thomas Fitzgerald often began speeches this way: "I like lawyers. I've spent my entire life in the company of lawyers. I could say the same thing about judges. I like judges. I've spent a large part of my life in the company of judges. One of the wisest that I have ever known was my father. He was a judge of the Circuit Court of Cook County. On the day that I learned that I passed the bar examination I rushed to his home to share my great news. I handed him the letter that I had received from the Board of Bar Examiners and stood anxiously as I watched him read it. As he handed the letter back to me he said, 'Welcome to a fraternity of the finest thinkers

Western Civilization has known over the last thousand years.’ My father’s statement has stayed with me throughout my career.”

He also often said this, “In 1984, the first defendant charged and tried in what was known later as Operation Greylord was convicted. In all, 92 officials were charged including 17 judges, 48 lawyers, 8 police officers, 10 deputy sheriffs, 8 court employees, and even 1 state legislator. Nearly all were convicted, most after pleading guilty. They lost everything: their liberty, their property, their good names, in some instances for nothing more than the price of a bar bill. The question that puzzled me then was how could they have so violated the public trust?”

This violation of the public trust seemed to haunt Tom Fitzgerald. He would often ask, how could those lawyers and judges betray their oaths? The oaths of office he took so seriously. In the moment, at the time, many judges looked at Greylord and said, well, those were just bad apples, this doesn’t affect me. Tom Fitzgerald saw it differently. He believed that judges had integrity, had to accept responsibility for a broken system, and work to repair it. This was not always a popular position, but this was a courageous leader. In my view, he dedicated the rest of his career to healing this terrible breach of faith. He was the founder of the Illinois Judicial Ethics Committee, a group of lawyers and judges who are available to give practical answers to judges who have ethical questions. He insisted that judicial ethics be a centerpiece of all judicial education programs. He was a leader in judicial education and worked to professionalize the Illinois judiciary. Because of him, today, judges accept that being a judge is not just a job, it’s a calling.

Tom Fitzgerald recognized that diversity on the bench was an important part of repairing the breach of public trust. He encouraged and mentored many, many women and people of color. He was a fierce defender of an independent judiciary. He said this: “Independent courts provide a venue where voices may be heard, voices that express politically unpopular ideas, ideas that express only a minority view, ideas that would be unwelcome elsewhere. Courtrooms are the places where such thoughts may be spoken. It is this reason that an independent judiciary is so important.”

He often said this: “Listen to the words of Martin Niemoller, a pastor in Germany who survived imprisonment in a concentration camp during World War II. He became a leading voice of penance and reconciliation after the war. Addressing the dangers of apathy in the face of threats to societies unprotected, pastor Niemoller wrote this: ‘In Germany they came first for the communists, and I didn’t speak up because I wasn’t a communist. And then they came for the trade unionists, and I didn’t speak up because I wasn’t a trade unionist. And then they came for the Jews, and I didn’t speak up because I wasn’t a Jew. And then they came for me, and by that time there was no one left to speak up for anyone.’ As long as our courts remain independent there will be places to give a voice to the voiceless and thus preserve our free society.” That was one of his favorite quotes.

By the time he became Chief Justice of the Illinois Supreme Court, Tom Fitzgerald had transformed the public perception of the judiciary. At a time of real constitutional crisis, the impeachment trial of a sitting governor, he was the very public face of integrity. The people of the State of Illinois placed their trust in him to provide a fair trial. The system of justice in our state is more just because of the leadership of Tom Fitzgerald, but we know there is still work to be done. Last year, this Court commissioned a court users’ survey. More than 12,000 surveys were collected from court users in 24 circuits across our state. The results were generally very positive; however, one question brought troubling results. People were asked if they agreed with this statement: I trust the courts to reach a fair result for everyone involved; 66.4 percent agreed. That sounds good until you realize that means one in three court users don’t have trust. We all recognize that we need to continue to promote the public’s trust and confidence. As judges we have an ethical obligation. Supreme Court Rule 62 requires that a judge must conduct him or herself in a manner that promotes confidence in the integrity and impartiality of the judiciary. As we all go about doing that work we are so fortunate to have the legacy of Tom Fitzgerald to inspire us. Thank you.

CHIEF JUSTICE GARMAN:

Thank you Justice Theis. I'd like to now call on Umberto Davi, Esquire, the President of the Illinois State Bar Association.

MR. UMBERTO DAVI:

Thank you, Chief Justice Garman, and thank you, Justices of the Supreme Court for your gracious invitation for me and the Illinois State Bar Association to share a few words today in memory of Justice Tom Fitzgerald. I am humbled by this opportunity to speak in this great courtroom. My wife and I are honored to participate with all of you who have come to pay your respects to a wonderful and great man, a great lawyer, and a great jurist.

What is it that I can tell you about Justice Fitzgerald that you don't already know? In the interest of full disclosure, let me first admit that I did not really know Justice Fitzgerald, though I am prepared to speak as if I did. By that I mean I did not know him in the sense that we know someone when he or she is part of our family or when he or she is part of a social circle that we frequent and that gather together from time to time to enjoy each other's company or when he or she is part of the same day-to-day work environment that we are all familiar with. I did not know Justice Fitzgerald in any of those ways, with one minor exception. The one exception is that I had the privilege to serve with him on the board of trustees of the John Marshall Law School after I was invited to serve on that board by then-chairman Alfred Gallow and by fellow trustee Leonard Amari. The board of trustees met once a month on a Friday for about eight months out of each year. Except for those times when the Justice's attendance was prevented by the many other duties that he had, he was there. He was there working alongside all the other trustees. He was there to participate in the discussion over those issues that were of importance to our school. He was there to offer his quiet, thoughtful insight on any of the points that were the center of discussion, offering his wealth of knowledge and his analysis and his suggestions that invariably helped all of us come to a resolution.

It was during those Fridays that I would get the opportunity to go up to him to greet him, without having to get in line with everyone else as we often do at all the social functions. What I remem-

ber from those Friday afternoons, when the trustees would gather, is that the Justice would give me his attention and he would ask how things are going and I would tell him. If I brought up a subject that resonated with him, for example the White Sox or golf, he would get that twinkle in his eyes with that knowing smile he had, and that memory is in my mind today as I share these words with all of you.

That same exchange took place on a Saturday morning a few years ago back when I ran into Justice Fitzgerald at a restaurant in Countryside on La Grange Road, whose name I don't remember, and he was sitting by himself quietly having a cup of coffee and reading his newspaper. I went up to him. I thought I should say hello to him, and he slowly put his newspaper down, and he gave me his attention, and for the next few minutes we conversed and I thought that was very nice of him to do that. I was intruding on his quiet time, but he graciously participated in the conversation.

In trying to make up for my limited knowledge of the Justice, I did what some of us lawyers do when we are called upon to learn about a topic, and what I did is I borrowed heavily from others who have greater knowledge than I. I called a few people that knew him well. I first spoke to the world's most knowledgeable authority on Justice Thomas Fitzgerald, and in the process of doing that I learned that, first and foremost, the Justice was a devoted husband to Gayle and that they had been married for 48 years and to be 49 this year. I learned that he was a loving and caring father to his five children. Actually, this particular point had become apparent to me when his son Thomas delivered words of remembrance about his father and his family on November 6, 2015, at St. Francis Xavier Church during a celebration of the life of Thomas Fitzgerald the man. I remember listening to his words and thinking, "what a great testament to his father and to his family." His love for his dad and for his family was very evident from what he said that day, and in my mind, that said it all. It was as good as a remembrance gets for a devoted family man who has come to rest. Gayle also shared with me how proud the Justice was of the five children and his eight grandchildren.

I learned from Gayle that the love of her life had very high standards, and that was no surprise. He had several role models who

were important in shaping his life, beginning with Abraham Lincoln, whose life he had studied and admired, and then his Aunt Ellen who would write letters to him and Gayle and would sign them off with the phrase “press on.” Other role models for him were Richard Fitzgerald, who was chief of the criminal courts of Cook County before Justice Fitzgerald took that position, and Justice John Stamos, who would always tell Justice Fitzgerald “do the right thing,” and our 26th U.S. President, Teddy Roosevelt, whose words Justice Fitzgerald would share with others and would also quote to his grandchildren. Among his favorite was one quote that I learned about this past Monday as I attended the swearing-in of thirteen new associate judges in Cook County. During his closing remarks Chief Judge Tim Evans, who was the emcee for the ceremony, told the audience about Justice Fitzgerald and read the quote the Justice had shared with him. It is an excerpt from a speech titled “Citizenship in a Republic” delivered by Teddy Roosevelt at the Sorbonne in Paris, France, on April 23, 1910. I would like to read those words to you, but please keep in mind that this was 1910, a bit before gender sensitivity was discovered and appreciated. And this is the quote: “It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds; who knows great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who neither know victory nor defeat.” Those were words of significance to Justice Fitzgerald, and he cared enough to share them with those that he cared for.

I also learned about Thomas Fitzgerald the law student. He attended the John Marshall Law School, where he excelled in his studies and graduated cum laude. Again, no surprise there, and I actually already knew that part. Some of his law professors were the like of Elmer Gertz, George Leighton, Bill Quinlan, Justice Joe

Gordon, and Tom Heinz. I did not know that, but I do know some of his classmates, and they are here today, and they included Leonard Amari, Warren Lupel, Rudy Shadi, and Judge Tim Evans. I asked Leonard Amari what could he tell me about his former law school classmate and friend, and he gave me three words: integrity, compassion, and friendship. Leonard also told me that he would try to hug him when they would meet, and the Justice would say “Len, I’m Irish, we don’t hug.” It’s an Italian thing. But he would hug him anyway, and they would both smile.

As we all know, the Justice’s post law school career took him from the Cook County State’s Attorney’s office to the Circuit Court of Cook County and eventually to the Illinois Supreme Court. And over the years we at the Illinois State Bar Association have very much enjoyed working with Justice Tom Fitzgerald, notably when he served as president of the Illinois Judges Association and when he was chair of the Special Supreme Court Committee on Capital Cases. Justice Fitzgerald was on the cover of our September 2008 *Illinois Bar Journal*, which featured a very detailed and insightful article written by Helen Gunnarsson in conjunction with his installation as Chief Justice of the Illinois Supreme Court. Among many other things, and it was quite a good article, the article noted the fact that one year before his election to the Supreme Court, the Justice had played a special role as chair of the Supreme Court Committee on Capital Cases. The work of the committee resulted in the creation of a Capital Cases Litigation Bar, the first in the country and a very important first step in addressing the then many issues related to capital punishment.

The article went on to note how after the Justice joined the Supreme Court his recommendations to his brethren on the Court led to the establishment of a Special Committee on Child Custody Issues. He and Justice Garman acted as committee liaisons to the Supreme Court. And that project culminated in the Supreme Court 900 series rules, rules which I turn to just about every day in my family law practice. The rules emphasize and promote the best interest of children in family law litigation and the need to promptly resolve those issues related to them. In the Justice’s own words, and I quote, “Six months or a year to a child is a long time when his

ultimate custody has not yet been determined.” Those were things of importance to the man we are celebrating today.

There is so much more to be said about the greatness of Justice Tom Fitzgerald as a man, as a husband, as a father, as an attorney, and as a jurist, but it is best that I end my comments with a couple of additional things that I came across as I prepared my remarks. First, I want to share with you a letter—it’s a very tiny letter, very brief. It’s no secret that I understand that the Justice loved golf and apparently, at least one time, he was able to experience Nirvana as golfers know it. On August 17, 2006, I wrote a letter to Justice Fitzgerald—and it must have been after one of those conversations on Friday board of trustees meetings—which says “Dear Justice Fitzgerald, I am privy to information about your recent amazing hole-in-one at the La Grange Country Club. Apparently the old maxim is true: good things happen to good people. Congratulations. Hopefully I’ll be hearing about more holes-in-one by you in the future.” I found this letter as I was preparing my remarks, and I noticed I signed it with my first name and not my last name, I’m not quite sure what that means but that’s the way it went.

Second thing, allow me to share with you something that he surely must have enjoyed when he first heard it. Just like today, when the Justice was sworn in as Chief Justice of this illustrious Court, several speakers paid tribute to him. One of them was then Chief Judge of the U.S. District Court for the Northern District of Illinois, the Honorable James Holderman. As many of us have come to learn, Judge Holderman is fond of writing poems that he enjoys reciting at special times to special people. Jim and Paula Holderman, who regret not being able to be here today—unfortunately they had long-standing plans, and actually Paula is out of state in California—have given me permission to recite the poem written by Judge Holderman, which is called, appropriately enough, “An Irish Blessing” and which was read to the Justice on Monday, November 8, 2008, in this very courtroom. And here’s the poem, “May the road rise up to meet you. May the wind always be at your back. May each day of your future be better than the best of your past. May the courage, compassion, and wisdom which God has bestowed on you remain a part of your being in everything that you do. May your

days as our state's Chief Justice be blessed with the truth. Though justice is sometimes elusive, we know that is the goal you will always pursue." Thank you very much.

CHIEF JUSTICE GARMAN:

Thank you, Mr. Davi. I'd now like to ask Mr. Nicholas Motherway, Esquire, to make remarks.

MR. NICHOLAS MOTHERWAY:

May it please the Court. It was a great honor when Gayle Fitzgerald asked me to participate in this proceeding. I give a different perspective than others who've been to this podium. I've known Tom Fitzgerald for a very long time, so long ago that it's before he became a judge. It's when both of us were assistant State's Attorneys of Cook County. And one of my regrets and his too was that we never had the opportunity to prosecute a case together, but we always were in touch with the law, with each other, exchanging war stories along the years. We were friends ever since that time. When Gayle asked me to appear here, it was an honor to be able to say yes. When the last chapter of Tom's life was being written, Gayle was there all the time, around the clock, showing the dimension that she didn't need to show until then, the love and bond between them. The same was true with their children, and we'll always remember what we saw in those declining days of Tom's life.

In regard to standing here today, I can say also, of course, it's a great honor to be among those who he counted as among his good friends of which there were so many. I was also honored to have been part of the proceedings in which Justice Fitzgerald became Chief Justice Fitzgerald. It seems like it was just yesterday that many of us were assembled in this same room as he was installed and remarks were made. Amazingly it was in 2008 that that happened. It seems like that couldn't have been that long ago, almost eight years. When he was installed, all of us—on the Court, in the audience—had high expectations that he would achieve very much during his tenure as Chief Justice. In the abbreviated time that he served in that position, our expectations were met.

He had so many different accomplishments that have been mentioned often in the awards that were given to him after he retired. But we know that among other things, he was the driving force behind there becoming an evidence code in the State of Illinois, which had been lacking. He was the author of many landmark decisions of this Court. His time was exactly as we hoped it would be, devoted to the interest of justice and for the people of this state. To have that occur and be shortened was regrettable, but his legacy lives on.

At this point in time there have been, not only today but after he retired, all professional groups, organized bar groups paid tribute to him in different settings. There have been very eloquent eulogies that have been given in regard to his passing, and I think it was mentioned that Tom Fitzgerald and also his son-in-law Howard Chang both gave eulogies at the funeral. Of all those I've heard given by various parties, those were the best because they came from the special relationship that they had with Tom. Having me standing here at this point, very much being already said, I think I can say on behalf of his friends this, it's very simple: Tom, we miss you.

CHIEF JUSTICE GARMAN:

On behalf of the Court, I certainly would like to thank everyone who has attended this ceremony today. Your presence here is deeply appreciated and noted. I certainly want to thank Justice Thomas, Justice Theis, Mr. Davi, and Mr. Motherway for sharing your thoughts and remembrances and your tributes to our friend and colleague Justice Fitzgerald. To his family, I hope it helps you realize how much we all admired and respected him. We will now adjourn to the ceremonial courtroom across the hall, where we can continue to share our recollections of Justice Fitzgerald's life and his work. I can assure you he would expect all of us to be smiling and having a good time in that endeavor. I'm going to ask the Clerk of the Court to make a copy of these proceedings and send them to the Fitzgerald family for permanent record. Ladies and gentlemen, the Court stands adjourned at this time.

