

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Remembering Tom Fitz

BY HON. GINO DIVITO (RET.)

It's nearly impossible to add to all the tributes for former Chief Justice Thomas R. Fitzgerald, both before and since his death. Nevertheless, based on our longtime friendship, I've been asked to contribute some personal recollections. Because the *near-impossible* should never serve as a deterrence, I'll give it a try.

Tom (when he joined the office in 1968) and I (who joined in 1963) were colleagues in the State's Attorney's office during the late '60s through the mid-'70s. We were members of a cadre of lawyers who occupied part of the second floor of what is now known as the Leighton Criminal Courts Building, at 26th & California in Chicago, well before there was an administration building. At first two, and later three, assistant State's Attorneys were assigned to each of the trial courtrooms on the upper floors of that building. When we were not in court, we worked in small offices in a single corridor of the second floor, doing the People's business in what every former and present assistant State's Attorney fondly refers to simply as "the office." We alone were responsible for prosecuting those accused of the major crimes that occurred in all of Cook County.

We were a close-knit band of brothers. Blanche Manning, who partnered with Tom for a while, was the only sister admitted to the brotherhood of those who toiled in the felony courtrooms on the upper floors during those early

years. Friendship occurred automatically. Everyone was a short walk from everyone else down that single corridor—where office doors always were open. Sharing a single washroom (where Blanche was excluded and where office memos were posted above the two urinals) was bound to create camaraderie.

Many years later, Tom and I would recall my naïve declaration (one with which he agreed) that the work was so good that I would gladly do it for the rest of my life, "if only they would pay me \$25,000 a year." Recalling that statement serves as a constant reminder that sometimes our goals need to be recalibrated.

Tom's honesty and deep commitment to achieving justice was best illustrated by his prosecution of a man who was accused of murdering a woman in Chicago's Grant Park. In that highly publicized case, Tom achieved a jury conviction. But a few years later, when he learned that another man was responsible for the murder, he immediately took action to free the wrongly convicted man. Though every prosecutor would likely have done the same, none would have acted with more alacrity and resolve than did Tom. It was a case that he frequently referred to—recalling his initial satisfaction with the conviction and the even more satisfying achievement of absolving an innocent man. For him, it was an important reminder of the seriousness of the work we

were engaged in, and of the need to do the right thing—consistent with the mantra that governed all of our actions.

In the early '70s, in addition to trying cases, Tom and I took on various administrative duties. In 1976, when 20 judges and their courtrooms at the Daley Center were transferred from the Law Division into the Criminal Division to help in relieving the tremendous caseload of the judges at 26th Street, Tom became the supervisor of all the assistant State's Attorneys who were assigned to those courts. As the chief of the office's Criminal Division, I was Tom's supervisor. It was a status of no consequence. Tom did not need supervision. But for a period of time, I could claim that I was his boss.

As the son of a former circuit court judge and the grandson and nephew of men who had held elective offices, Tom had a good political pedigree. He was elected to the bench at age 35, becoming the youngest judge in Cook County. He was superbly qualified, but he was intent on proving that he was worthy of the position. From the outset, he achieved mightily. His assignments as a trial judge reflected the confidence that the chief judge and supervising judges had in his competency. Early on, he served in one of the new Criminal Division courtrooms at 13th & Michigan where the difficult proceedings involving repeat felony offenders were held. He served there with his friend George Marovich, who later

Remembering Tom Fitz

CONTINUED FROM PAGE 1

served as a federal district court judge. They shared similar temperaments and similar skills in conducting dignified court proceedings.

Tom's assignment in 1987 as the supervising judge of the Chicago Traffic Court was made with the specific goal of cleaning up that court in the wake of the Operation Greylord scandal. Clean-up he did. In addition to bringing about much-needed reforms, he converted that court into a place where the traditional first assignment for newly appointed and elected judges provided dignity and needed mentoring—a status that endures today.

In late 1988, after his heralded work in cleansing Traffic Court, Tom was the easy selection to replace the retiring and revered Judge Richard Fitzgerald as the presiding judge of the Criminal Division. He was then my supervisor. That relationship led to a memorable conversation in early 1989. Tom told me that he had heard that I was seeking a transfer to a civil court assignment. He said he wanted me to remain in the Criminal Division and that he would not approve a reassignment. I told him that I was leaving the court. He reiterated that he would block a transfer. I repeated that I was leaving the court. He said, "You mean you're retiring?" "No," I said, "I'm leaving the court." Flustered, he said, "If you're not retiring, what do you mean?" It was then that I explained that, although I had made inquiries about receiving a civil court assignment in order to broaden my experience, I had ceased that effort because I had been informed by a Supreme Court justice that I was to be assigned to the appellate court. Aside from a few family members, Tom was the only person I told of the expected assignment. I wanted the information about the unsolicited and surprising pending assignment to be kept confidential, because I feared that the Supreme Court justice might have a change of mind or be persuaded by others not to make the assignment. Tom was overjoyed by the

news, and he kept that confidence for the agonizing three-month period before the assignment became official.

During his service as the Criminal Division presiding judge, Tom led the effort for death-penalty reform by chairing the Special Supreme Court Committee on Capital Cases. By the time he ran for the Supreme Court, his outstanding work on the circuit court, as a trial judge and a presiding judge, was well known. Also well-known was his reputation as a skilled law school teacher of trial advocacy and his leadership of the Illinois Judges Association as its president. He was simply one of the most highly regarded judges in the State. So, his election was heralded with universal approval—even by supporters of his primary opponents and even by Republicans, who did not slate a candidate. He did not disappoint.

The very first thing that he did as a Supreme Court justice—on the day he was sworn in—was to announce the creation of a screening committee for his appointments of judges to the circuit and appellate courts. During his entire 10-year service on the Court, I was honored to have served as the chairman of that committee. Its members were a group of independent and highly engaged people, characterized by an icon like Dawn Clark Netsch, who never missed a meeting. Tom told us that we were to use our independent judgment on his choices. And he meant it. In turn, our internal rule was to determine whether each candidate was someone who would bring honor to the court in general, and to Tom in particular. He gave us free rein—never objecting even when we rejected a few of his selections, each of whom already had been approved by evaluating bar associations.

As shown by the praise of his colleagues and so many others before and after his death, Tom's work on the court was exemplary. Of course, the high water mark in his career occurred when he was elected by his colleagues to be chief justice starting

in September 2008—in time to preside over the impeachment proceedings of Governor Rod Blagojevich in January 2009. His role in those proceedings drew universal praise. He often said that it was what he was most proud of. But I believe that the achievement that will leave a greater mark on his place in the Court's history was his role in shepherding to approval the codification of the rules of evidence—the Illinois Rules of Evidence.

Tom knew, partially from the unsuccessful effort to codify evidence rules in the late '70s, that a free-ranging effort to adopt evidence rules would fail. He knew that the only hope of getting the approval of both his colleagues on the Court and the Bar was to simply codify existing evidence rules—those created by rules, common law, and statutes. Codification of existing rules therefore was the mandate of the Evidence Committee, and it was a mandate that Tom reiterated for Committee members at each meeting. As a result, today Illinois has in place codified evidence rules that are a source of valuable guidance for both judges and trial lawyers.

Tom's departure from the Supreme Court—after he had filed for retention for another 10-year term and with one more year left on his term as chief justice—was another indication of his honesty, his service, and his propensity to do the right thing. His decision to retire, made during the high point of his career, came when he began feeling the early indications of Parkinson's and after that disease had been diagnosed. In truth, he could have continued to function. The retention election was only a month away. And he could have served at least until the end of his term as chief justice. But, though he knew he could continue, he also knew that the disease would begin taking a toll. He explained his reason for leaving in these simple terms: "I didn't want to do anything to hurt the court or the people it serves." Those are sentiments that should guide every judge and every elected official: Service before self.

No reminiscence about Tom would be complete without understanding realities about him separate from his public life.

Tom was a Leo man. His dedication to his alma mater, Leo Catholic High School, was legendary. Leo blood circulated in his veins. He was proud, too, of his roots in The John Marshall Law School, where he helped in starting the law review, and of his long-time teaching of trial advocacy at IIT-Chicago Kent College of Law.

He also was totally dedicated to his beloved White Sox. A member of the Nellie Fox Society, he joined with attorneys Louis Hegeman, Gordon Nash, and Nick Motherway, a colleague in those early days in the State's Attorney's office, to spearhead the successful effort to get Nellie Fox admitted into the Baseball Hall of Fame.

Just three years ago, the Sox honored him at Cellular Field by allowing him to throw the first pitch to a young pitcher named Chris Sale. I have a baseball signed by Tom from that historic event; unfortunately, I neglected to get Sale's autograph.

An avid reader, his interests were diverse. But his favorite books were about Abraham Lincoln and the Civil War era. His knowledge of Lincoln and that period in our country's history rose to the level of scholarship.

Family was everything to Tom. He was enormously proud of his four daughters, his lawyer son, and his grandchildren. Gayle, his wife of almost 50 years, was his great love and the solid anchor in his life. Her steadfastness was particularly evident when Parkinson's began ravaging his body

and his mind. During the difficult periods, she provided him support and comfort.

We grieve with Gayle and the family for their loss. But we rejoice in the gift of his company—of having known him and having walked with him.

A favorite poem of Tom's was the one given to him by the students in one of his classes at IIT-Kent. It begins and ends with these words:

"Some people come into our
lives and leave footprints on our
hearts and we are never ever the
same."

Thanks, Tom, for what you have meant to so many of us, and for the effect that you have had on our lives and on all our hearts. ■

**THIS ARTICLE ORIGINALLY APPEARED IN
THE ILLINOIS STATE BAR ASSOCIATION'S
BENCH & BAR NEWSLETTER, VOL. 46 #4, DECEMBER 2015.
IT IS REPRINTED HERE BY, AND UNDER THE AUTHORITY OF, THE ISBA.
UNAUTHORIZED USE OR REPRODUCTION OF THIS REPRINT OR
THE ISBA TRADEMARK IS PROHIBITED.**