

Thomas R. Fitzgerald 2000 – 2010

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The first Illinois Chief Justice to preside over the impeachment trial of a sitting Governor,

Thomas R. Fitzgerald was born in Chicago on July 10, 1941, the son of a circuit court judge.

Graduating from the South Side's Leo Catholic High School, he attended Loyola University



Chicago before enlisting in the United States Navy.

Following his tour of duty, Fitzgerald entered John

Marshall Law School, where he helped found and served

as associate editor of the school's law review. Graduating

with honors, he was admitted to the Illinois bar in 1968,

then began his law career as a prosecutor in the office of

the Cook County State's Attorney. He married Gayle A.

Aubry, and they would become the parents of five

children.

In 1976, Fitzgerald won election as the County's youngest circuit judge. Eleven years later, he became Supervising Judge of the high-volume Traffic Court. In that position, he worked on Operation Greylord—a four-year federal bribery and case-fixing investigation that resulted in nearly one hundred convictions of judges, attorneys, and Cook County court personnel. "The amazing thing about it is that people who were involved in it lost everything," Fitzgerald said. "They lost their liberty, they lost their money, they lost their freedom, they lost their father's good name—which I always think of as being the most valuable thing of all."¹

Two years later, he returned to the Criminal Division as Presiding Judge of both Cook County Criminal Court and Illinois' first statewide grand jury. There he created an evening Narcotics Court to both help drug addicts receive treatment and relieve jail overcrowding and assigned floating judges to ensure full use of courtrooms.²

From 1986 to 1996, Fitzgerald taught law at John Marshall Law School and the Einstein Institute for Science, Health and the Courts. At Chicago-Kent College of Law, he served as assistant coordinator of the trial advocacy program. Fitzgerald also worked to improve the quality of justice in the trial of capital cases, chairing a Supreme Court committee in 1999 that sought to improve capital punishment proceedings. The group drafted landmark rules, including a requirement that death penalty cases be tried only by well-experienced, court-trained attorneys.³

In 2000, as a First District Democratic candidate for the Illinois Supreme Court to fill the seat vacated by Justice Michael A. Bilandic, Fitzgerald sought both a Republican and a Democrat to co-chair the announcement of his campaign. Former Governor James R. Thompson became his Republican supporter and former Illinois Comptroller and State Senator Dawn Clark Netsch as his Democratic backer. "The two of us presented him to the world," Thompson recalled. "When you've got a judge who is widely regarded as fair and hardworking, they stand out when they have that appreciation from not only the legal community, but also from the political community."⁴

Defeating appellate judges William Cousins Jr. and Morton Zwick and attorney Christine Curran in the primary campaign, Fitzgerald then won the general election. In the 2002 case, *Donaldson v. CIPS Co.*, Fitzgerald authored the toxic tort opinion affirming the judgment

favoring the plaintiff. The parents of Zachary Donaldson and those of three other children sued Central Illinois Public Service Company, alleging that actions of omission in the cleanup of a former manufactured gas plant in Taylorville, Illinois, caused their children to develop neuroblastoma, a rare peripheral nervous system cancer. After a four-month trial, the Christian County Circuit Court jury returned a \$3.2 million verdict against CIPS and the Appellate Court affirmed the judgment. “Plaintiffs’ experts in the instant case relied upon the only available source of information to form the basis of their conclusions,” Fitzgerald wrote, “similar, yet not identical, scientific studies and theories. From these studies, plaintiffs’ experts concluded that coal tar caused these plaintiffs’ neuroblastomas. CIPS offers no evidence to suggest that this method, extrapolation, is not utilized or generally accepted among the scientific community. . . . We find that extrapolation is sufficiently established to have gained general acceptance in these limited circumstances.”⁵

Early in his tenure on the bench, he worked with Justice Rita B. Garman to adopt rules for expediting child custody cases through the legal system. He also helped improve the delivery of free legal services to veterans and the rehabilitation of accused offenders with mental health issues.⁶ In 2008, his colleagues unanimously chose Fitzgerald to succeed Robert R. Thomas as Chief Justice. “It will be a unique honor to be first amongst equals at such a gathering of people,” Fitzgerald said at the time. “There are no kings here, there are only people trying to do their job as best they can and they need a lot of help to do it. I will look to my colleagues for that help.”⁷ That same year, he received the prestigious John Paul Stevens Award, a Chicago Bar Association and Chicago Bar Foundation honor to Illinois attorneys and judges who demonstrate extraordinary integrity and service to the community throughout their careers.

In January 2009, Fitzgerald presided over a first-of-its-kind Illinois Senate impeachment trial of Governor Rod Blagojevich for political corruption. “With scant precedent to work with—save for the impeachment proceedings of former President Bill Clinton and an Illinois Supreme Court judge back in 1833,” reported the *Chicago Daily Law Bulletin*, “any move Fitzgerald made was magnified.”⁸ Fitzgerald did not allow Senate members to break up a list of offences that House members had approved for Senate consideration, equating the list to a “grand jury bill of indictment that should not be altered, but approved or rejected in full.” Blagojevich was impeached and removed from office in 2009, and later convicted and sentenced to federal prison.

In 2010, Fitzgerald wrote a strongly worded opinion in *Lebron v. Gottlieb Memorial Hospital*, striking down a state law that limited non-economic damages for medical malpractice. At issue was the case of Abigaile Lebron, born in 2005 with numerous permanent injuries, including cerebral palsy and cognitive mental impairment. Her mother, Frances Lebron, filed a malpractice action in Cook County Circuit Court against the hospital, her physician, and a registered nurse who assisted in the delivery. Lebron challenged the Illinois law that placed limits on non-economic damages, alleging that her infant “sustained disability, disfigurement, pain and suffering to the extent that damages for those injuries will greatly exceed the applicable limitations on noneconomic damages under Public Act 94—677.” Justice Fitzgerald wrote that such limitations in medical malpractice actions “violates the separation of powers clause of the Illinois Constitution . . . by permitting the General Assembly to supplant the judiciary’s authority in determining whether a remittitur is appropriate under the facts of the case.”⁹

During his Chief Justice tenure, Fitzgerald spearheaded initiatives to enhance judiciary performance, including a requirement that each of the state’s trial judges participate in a

confidential performance evaluation program. He also advocated in the Illinois General Assembly for court funding of probation services as a viable tool for rehabilitation. Fitzgerald won retention to a second ten-year term in 2010, but in September he announced his retirement from the Court, citing a medical diagnosis of Parkinson's Disease and adding that he feared making decisions that would harm the court. "Right now," he said in a written statement, "I'm fully capable of discharging its duties. I don't know how much longer that will be true."¹⁰

To his Supreme Court colleagues, Fitzgerald became more than a respected judge—a storyteller, golf partner and confidante—"a kind and gentle spirit who always looks for the best in both people and circumstance," Justice Robert R. Thomas said.¹¹ An avid White Sox fan for more than a half century, Fitzgerald helped establish the Nellie Fox Society, which successfully advocated for the 1959 American League Most Valuable Player's admission to the Baseball Hall of Fame. In May 2012, Fitzgerald threw the ceremonial first pitch at the White Sox's "Justice Thomas Fitzgerald Appreciation Day," having practiced for the occasion, he said, by playing catch with a former law clerk and throwing against a backstop at a park near his home.¹²

Fitzgerald served terms as president of the Illinois Judges' Association, chair of the Illinois Supreme Court Special Committee on Capital Cases, member of the Governor's Task Force on Crime and Corrections, chairman of several committees of the Illinois Judicial Conference. He served on the Chicago Bar Association's Board of Managers and as chairman of the Chicago Bar Association's committees on Constitutional Law and Long-Range Planning. Fitzgerald died at his LaGrange home from Parkinson's complications on November 1, 2015 at the age of seventy-four. His life was celebrated at a Funeral Mass at his parish, St. Francis Xavier Catholic Church. "Having joined the court shortly after his election in 2000, I had the privilege

of serving with Justice Fitzgerald for a decade.” Chief Justice Garman reflected upon his death. “He was a warm and caring person, and even when on the bench, his demeanor revealed his genuine concern about the people who appeared before him. Tom Fitzgerald was dedicated to serving the people of Illinois and to making the judicial system as fair, efficient, and accessible as it could possibly be.”¹³

¹ *Chicago* (December 2010/January 2011), p. 20.

² *Illinois Bar Journal* (September 2008), p. 449.

³ *Chicago Daily Law Bulletin*, 3 November 2015, p. 6; Supreme Court of Illinois news release, 3 November 2015.

⁴ *Chicago* (December 2010/January 2011), p. 21; *Chicago Daily Law Bulletin*, 3 November 2015, p. 6.

⁵ *Donaldson et al. v. Central Illinois Public Service Company*, 199 Ill. 2d. 63 (2002).

⁶ *Chicago* (December 2010/January 2011), p. 22.

⁷ *Chicago Daily Law Bulletin*, 19 May 2008, p. 20.

⁸ *Chicago Daily Law Bulletin*, 3 November 2015, p. 6.

⁹ *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d. 217 (2010); *Chicago Daily Law Bulletin*, 3 November 2015, pp. 1, 6.

¹⁰ *State Journal-Register* (Springfield, Illinois), 4 November 2015, p. 19.

¹¹ *Chicago Daily Law Bulletin*, 3 November 2015, p. 1.

¹² *Chicago Daily Law Bulletin*, 25 May 2012, pp. 1, 22.

¹³ Supreme Court of Illinois news release, 3 November 2015.