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Title: Time bears no justice, a veteran judge finds as an unwelcome retirement raises its gavel

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Judge John Moonan Fitzgerald has wrangled with many a lawyer and miscreant during his nearly 30 years on the District Court bench. Usually, he comes out on top.

But when Fitzgerald turns 70 on Jan. 20, he will face a foe he can't dodge or bamboozle. The law, which he swore to uphold when he took office in 1963, says it's time to set aside the gavel and black robe.

"I'm not looking forward to retirement," said Fitzgerald, pacing between the bookcase and window in his chambers last week in the Scott County Courthouse in Shakopee. The state's longest-serving active judge is an impish Irishman whose eyes twinkle as he laughs about past skirmishes in and out of court.

Fitzgerald, a former president of the state District Judges Association, came to the bench after serving as a World War II fighter pilot and a state representative from New Prague, where he also was city attorney.

He is known as a fair judge and a scrupulous enforcer of proper court attire, decorum and punctuality, said Rick Mattox, chief public defender for the First Judicial District.

"He took time to talk to people and listen to them," Mattox said. "He occasionally chewed them out, but he gave them the attention they deserved. He nailed me a couple of times, once for having my hand in my pocket. He demanded more from us: that we prepare our cases thoroughly and treat witnesses properly and fairly. . . . He made us better lawyers."

Occasionally Fitzgerald's tenor voice has been raised to croon an Irish tune in the hallways outside the courtroom. He always sports a green suit on March 17, a date in bygone years when, outfitted as a leprechaun, he delivered Irish verse and ballads to fellow legislators.

"On St. Patrick's Day, they turned over the House of Representatives to him," said Minnesota Chief Justice A.M. (Sandy) Keith, who grew up across the street from Fitzgerald in Rochester, Minn.

"I was in the Senate then and I used to go over to see him perform. . . . He has the Irish wit and tradition," Keith said. "He was giving me hell the other day about my sins of omission and commission, which he considers to be rather lengthy."

There are probably as many "Fitz" stories as there are unfortunate defendants who have squirmed under his stern gaze and tongue lashings. One of his favorite targets is fathers who fail to make child-support payments.

"If they don't support their children, they go to jail until they agree to do so," Fitzgerald said. "I tell them, 'I paid for my six kids; why should I have to support yours, too?'"

He noted that those jailed often quickly produce large sums of overdue support money.

Fitzgerald, who lives with his wife and an ornery English bulldog in New Prague, knows about children struggling to get by. He grew up during the Depression with five siblings in Rochester. His father lost his building contracting business and was out of work several years before finding a job in 1936 clearing slums in Minneapolis. He died of colon cancer three years later, when Fitzgerald was in high school.

Fitzgerald said his mother, Kathleen Moonan Fitzgerald, "a tough Irish woman" and former Latin teacher, raised the children and got them all through college. Her father and brothers were lawyers, and her three sons followed suit. Two became judges; brother Patrick is on the Hennepin County bench.

In 1951, Fitzgerald married Mary Mach of New Prague, where he had joined an uncle's law firm. An active DFLer, he was elected to the state House in 1957. Five years later Gov. Karl Rolvaag appointed him a district judge in the First District, which includes Dakota, Scott, Carver and four adjoining counties.

Many a defendant has suffered Fitzgerald's lectures. He sharply rebuked serious offenders, such as the Cermak brothers, convicted of sexually assaulting children in the Jordan area. But he has softer words for lesser villains, encouraging them to mend their ways.

"I've seen people wet their pants and faint and everything else in front of him," said court clerk Darlene Menke. "He could pick up real quick when somebody needed to have their attention brought forward. But under his stern demeanor, he is a real marshmallow."

"He's good to all the people he works with. He doesn't think he is any better than the rest of us," added Margaret Born, another of the 13 Scott County Courthouse clerks who each received a poinsettia this Christmas from the judge. "He's very forthright. He'll tell you exactly what he thinks."

Fitzgerald thinks some judges get carried away with their powers.

"The first part of being a good judge, aside from listening to everybody, is realizing that you don't know everything," he said. "That's why I take (cases) under advisement. I know it slows things down a bit, but at least you have a better chance of coming up with the right answer . . . the truth and justice."

On his way to work, Fitzgerald stops nearly every morning for the 7:45 a.m. mass at St. John the Baptist Church in Jordan, said the Rev. Brennan Schmiege.

"He always starts the hymns," Schmiege said. "They all join in once he takes off. You can tell when he's not there."

PHOTO

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