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Remembering Judge Foley

By Terry Walters *

On Sunday morning, August 18, I sat down to enjoy one of life's singular pleasures, a leisurely reading of the Sunday paper. As I glanced over the front page, I saw a familiar picture in the lower right-hand corner. It was the formal photograph of Court of Appeals Judge Dan Foley, which I had seen so many times before. I turned my attention to the photo and was hit by the simple declarative sentence: "Judge Daniel Foley Dies". I knew that Judge Foley was 80 and I knew he had undergone heart surgery in the past, but still it didn't seem possible. I guess it is a cliché to say "it doesn't seem possible" when someone dies. With Judge Foley, however, it wasn't a cliché, but rather a hard truth that was felt by many around the state and nation.

The Gruff Man . . .

I last appeared in front of Judge Foley about two years ago when he came to his old venue, Olmsted County, to fill in during a period of judicial turnover. My case was one of the

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first group to be heard after the lunch break. I arrived a little early and found the courtroom empty except for one young court assistant. She had met Judge Foley for the first time that morning and had the look of a young recruit on the first day of basic training. With wide eyes she asked me if I had been in the courtroom that morning and went on to explain that the judge had yelled at "everybody." I was about to reassure the rattled young assistant, when I heard the courtroom door open behind me, followed by the familiar voice of Judge Dan Foley. We shook hands and greeted each other warmly as the bewildered young woman looked on. I recall being glad the young court assistant had witnessed our meeting. The gruff man with the heart of gold is another cliché, but again, with Judge Foley, it was an absolute truth.

Judge Foley was on the district court bench, chambered in Olmsted County, when I began practicing law in the late '70's. That was a decade in which men's fashion went through a sartorial version of the Dark Ages. The practice of wearing turtle neck shirts in lieu of shirt and tie was one that was for a short time in vogue. Never, however, in Judge Foley's courtroom. If you came into his courtroom, you had better show respect for the law and a male attorney who wasn't wearing a necktie was not showing the proper respect. One unfortunate attorney was sitting in the back of Judge Foley's courtroom during a wintertime court session, wearing a sweater under his suit coat. The sweater obscured the young man's necktie. Judge Foley halted proceedings so he could verify that the young attorney in the back of the room was indeed properly attired. It didn't matter that the young man was in the gallery; he was an attorney and he was in a courtroom. As I was getting dressed on August 22 to go to St. Paul for Judge Foley's funeral, I told my wife: "I sure hope St. Peter was wearing a necktie last Saturday."

With the Heart of Gold . . .

Judge Foley, despite his reputation for running a stern courtroom, was not above laughing at himself. He could separate the law being represented by Judge Foley from Dan Foley the individual. On one occasion, Judge Foley was about to send out a jury, having forgotten to first ask if either counsel noted any errors or omissions in the instructions. In front of the entire courtroom, the elderly bailiff, Jack Dineen, slowly shuffled up to the bench and whispered into Judge Foley's ear. He then shuffled back to his spot near the rear of the jury box. Judge Foley turned with a grin on his face and fixed his gaze on the bailiff. The bailiff would not look back, but had the expression of the proverbial cat that had swallowed the canary. After a pregnant pause, Judge Foley turned and, in a deliberate manner, asked the other attorney and me if we had noted any errors or omissions. After receiving our answers, he then turned back to the bailiff and, with the grin still on his face, asked if he had done it right that time. No one enjoyed the laughter that ensued more than Judge Foley.

I was involved in a week-long personal injury trial before Judge Foley in the early '80's. The trial included three veteran attorneys and two young pups who were second chairing, I being one of the pups. During bench conferences throughout the trial, the other attorneys would lean their arms on the judge's bench and, although it was a practice that irritated him, Judge Foley said nothing about it. On the fifth day of trial, another bench conference occurred and the other four attorneys all had their arms on the bench. Then, as if choreographed, the three veterans all simultaneously put their arms down, leaving only the young lawyer in this compromising position. Judge Foley immediately roared at the unaware offender to get his arm off the bench. Seeing the lawyer's bewilderment, the judge

grinned and, with his eyes twinkling, softly said, "you're too young to do that." I've always thought that on that occasion, Judge Foley was poking fun at his own courtroom persona.

And Love and Respect for the Law

I used to have spirited discussions with Judge Foley while he was still on the district court bench about the constitutionality of some of the new DWI laws that were being enacted in the early '80's. I told the judge that "carnage on the highways" is not a term found in the Constitution, nor is it a recognized exception to the 4th Amendment. Early on in his career on the Court of Appeals, Judge Foley authored an opinion dealing with a DWI case. In a footnote, he bemoaned the "carnage on the highways"! When my wife and I saw that footnote, we looked at each other and said, "you don't suppose ... ?" A few months later, Judge Foley was the guest speaker at an Olmsted County Bar Association meeting. When he saw me, he had the look of a little kid who had just put a box of spiders in the teacher's desk. He excitedly asked, "Did you see it? Did you see it?" The footnote had indeed been a personal message from the judge. Nearly two decades later, he was still teasing me about our long ago discussions. On another occasion, I appeared before a three-judge Court of Appeals panel on a case involving a roadblock stop. Before I could say even one word, Judge Foley, with a wry grin on his face, said: "Now counsel, this case involves the 4th Amendment, doesn't it?"

As the news sank in on Sunday morning, August 18, I thought back to my last meeting with Judge Foley. He accompanied Chief Judge Toussaint to Rochester last spring to attend an Olmsted County Bar Association meeting. Before the meeting, attorneys took turns telling "Foley Stories" while the judge unconvincingly accused us of embellishing. In a warm and

wide-ranging conversation, the judge talked of his old, now departed, bailiff Jack Dineen and of his ancestral home in Ireland. Later that night, he spoke movingly to the meeting about his love and respect for the law. When he concluded his remarks, he received a standing ovation. If, as it turned out, it was to be his last visit to the Olmsted County Bar Association, it could not have been scripted any better. ■



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