

Joseph E. Daily 1948-1965

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Joseph Earl Daily was a precocious scholar even when measured against his extraordinary peers on the Illinois Supreme Court. He completed high school in three years,



attended college then graduated cum laude from Yale law school and was admitted to the Illinois bar at the age of twenty-one, which was the earliest one could become a lawyer under the rules of admission.

Daily was born in Manito, Illinois, about twenty-five miles southwest of Peoria on January 22, 1888. His father was Joseph Sidney Daily, and his mother was Drusilla Robinson Daily. His grandfather arrived in the United States from County Tyrone,

Ireland, in 1855. When he was still a child, his family moved to Chillicothe, Illinois, which also lay about twenty-five miles from Peoria, but to the northeast. After completing his education, he lived the whole of his adult life in Peoria.

His education began in the public schools in Chillicothe. It took him only three years to finish high school, and he was named class valedictorian at age fifteen in 1903. He worked briefly as a telegrapher for the Santa Fe Railroad in Chillicothe before attending the University of Illinois for two years. From there he went to the law school at Yale from which he graduated with honors in 1909. That same year he was admitted to the bar in Illinois, settling in Peoria to begin his professional career as an attorney.¹

His private practice was interrupted when he was elected to two terms as city attorney for the City of Peoria from 1911 to 1915. When he gained the office, he was only twenty-three and the youngest person ever to serve in that capacity. He married Audrey Woodward in 1914, and they had two sons. He resumed his practice after serving as Peoria's city attorney and served a public role as a clerk for Illinois Supreme Court Justice Clyde E. Stone. In June 1926, he was elected to fill a vacancy created by the death of the incumbent judge in the Tenth Judicial Circuit, consisting of Peoria, Tazewell, Stark, Marshall, and Putnam counties. Although he announced himself publicly as a Republican, he obtained endorsements from both political parties for election and re-election to four six-year terms as a circuit judge. On the circuit bench he earned a reputation for keeping trials moving and discouraging flamboyance.² Indeed, during divorce conferences he would not let the participants be seated because in that way, he said, "agreements came more readily."³

Because of the backlog of cases in Chicago, it was necessary and customary to have judges from the circuits surrounding Cook County to send judges to Chicago to help lessen the load on the dockets there. These "country judges" sometimes presided in as many as half of the trials in Cook County. Daily started coming to Chicago in 1927 to serve in circuit and superior court trials. Later on, when sitting on the Supreme Court, he was a significant actor in a concerted effort to petition the governor to call a special session of the General Assembly to create more circuit judgeships. He was considered an excellent trial judge as measured by the small number of his cases that were appealed; even fewer were re-tried.⁴

Daily was president of the Peoria Bar Association and the president of the Federation of Bar Associations in the 1920s before becoming a circuit judge. He maintained a lifelong membership in the state and local bars associations and attended meetings regularly. In addition

to his professional memberships, he also belonged to the Benevolent and Protective Order of Elks, the Knights of Pythias, the Shriners, and achieved the status of a thirty-third-degree Mason. He was a member of Peoria's Westminster Presbyterian Church. During his years on the Supreme Court he was awarded honorary degrees from Bradley University in Peoria and John Marshall Law School in Chicago.⁵

Daily joined the Supreme Court in 1948, when he was selected to fill the unexpired term of his deceased mentor, Justice Clyde Stone. Ernest H. Pool of Ottawa was also in the running for the seat on the bench at the Republican party convention that March, ninety-one roll call votes were necessary before Daily got the nod to run in the June special election.⁶ For his re-elections in 1954 and 1963, he enjoyed endorsements from both political parties as he had for his elections to the circuit bench. As a Supreme Court justice, he wrote over two hundred opinions, which, according to his colleagues on the bench, were "models of clarity." Daily also served as chief justice from 1951-1952 and from 1958-1959. He was also noted for his prodigious memory that allowed him to call up cases, arguments, and precedents without consulting books.⁷

His era was a tumultuous time to be on the Supreme Court. The state's judicial system, under the Constitution of 1870, had long operated with troublesome flaws. In the late 1950s and early 1960s, the bench and bar came together with the political structure and the citizens of Illinois to hammer out a new constitutional article to reorganize the state's judiciary. The court in that day also had to deal with some of the problems of modernization in the post-World War II world; for example, in 1964, Daily wrote the court's opinion approving municipal water fluoridation based on the principles of police power and public health.⁸

The most controversial issue during his entire thirty-nine years on the bench was the application of George Anastaplo to the bar of Illinois. In November 1950, Anastaplo finished

law school and passed his bar exam. When he went before the Supreme Court's Committee on Character and Fitness, he refused to answer a question about membership in the Communist Party. The committee refused to certify him, and the court did not admit him to the bar. The issue came before the Illinois Supreme Court, and Daily wrote the opinion for the court supporting the Committee on Character and Fitness' denial. Anastaplo maintained that any questions the Committee might have concerning his political philosophy was irrelevant to his bar admission and that he therefore did not have to answer inappropriate questions. Daily's opinion held that since the Communist Party intended to overthrow the United States government and the Constitution, and since an oath to support the Constitution was required for bar membership, the question was relevant. After a rehearing at the Illinois Supreme Court in 1960, the was finally decided in 1961 at the United States Supreme Court. In a 5-4 vote, the U. S. Supreme Court refused to the review the matter, stating that Anastaplo's non-cooperation was sufficient to deny bar admission. The case is still referred to by scholars and lawyers and is best known for Justice Hugo Black's dissent, in which he stated, "We must not be afraid to be free."⁹

Anastaplo went on to a brilliant career producing scores of articles and books on the law, but he was never admitted to the bar. An interesting episode in the case occurred sometime after the court's denial when Justice Daily entered a taxi in Chicago and discovered that the driver was George Anastaplo, who was working as a cabdriver while he continued his education. Daily told Anastaplo that no one ever thought he was a communist and urged his driver to re-apply for the bar. On principle, he never did.¹⁰

Years later, after a return to quieter cases, Daily took ill and was admitted to Columbus Hospital in Chicago on March 31, 1965. He never recovered and died four months later on July 1, 1965, without ever leaving the hospital. His wife Audrey having preceded him in death four

years earlier, he was attended to by his sons who arrived from Florida and California. Governor Otto Kerner and Lt. Governor Sam Shapiro as well as the other members of the Supreme Court attended his funeral services at the Scottish Rite Cathedral in Peoria. He is buried in Park View Cemetery in Peoria.¹¹

¹ James Montgomery Rice, *Peoria City and County*, v.2 (Chicago: S.J. Clarke Publishing Company, 1912), 570; "Joseph E. Daily, 1888-1965," *Illinois Bar Journal*, v. 54, no. 3 (November 1965), 230-231.

² 35 Ill.2d 11 (1967).

³ *Illinois Bar Journal*, *op. cit.*

⁴ *Chicago Bar Record*, v. 42, no. 9 (1960-1961), 213; 35 Ill.2d 15; "Judge Daily Viewed as a Candidate for State Supreme Court," *Chicago Daily Tribune*, 17 January 1948, 10.

⁵ *Peoria City and County*, 570; 35 Ill.2d 11-17.

⁶ *Chicago Daily Tribune*, 16 February 1948, A1; *Chicago Daily Tribune*, 26 March 1948, B7.

⁷ Eulogy by Justice Ray I. Klingbiel, *Chicago Tribune*, 2 April 1965, 1.

⁸ *Ibid.*

⁹ *In re Anastaplo*, 3 Ill.2d 471 (1954); *In re Anastaplo*, 348 U.S. 946 (1955); *In re Anastaplo*, 349 U.S. 903 (1955), 349 U.S. 908 (1955); *In re Anastaplo*, 18 Ill.2d 182 (1960); *In re Anastaplo*, 366 U.S. 82 (1961).

¹⁰ Andrew Patner, "The Quest of George Anastaplo," *Chicago Magazine* ((December, 1982), 184ff.

¹¹ *Ibid.*