

Harry B. Hershey 1951-1966

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Justice Harry Bryant Hershey claimed that as a child helping out in his father's grocery store, as children often did in those days, he received early training in getting along with people.

He was born in Mifflin, Ohio, on March 8, 1888, the son of F. B. and Anna Gongwer Hershey. The family moved to Taylorville, Illinois, about twenty miles southeast of the state capital. He graduated from the local high school and completed an undergraduate degree from the University of Illinois in 1909. His early training in getting along with people undoubtedly led to his election as freshmen class president and his life-long public service. He



graduated from the University of Chicago school of law with honors in 1911.¹

After law school, Hershey was admitted to the bar and was elected City Attorney for his hometown all in the same year. His impressive record in municipal government led to his election in 1914 to State's Attorney for Christian County, a position in which he earned a reputation for talent and fearlessness in dealing with crime and criminals. He would be reelected and hold the office until 1922.²

Hershey declined another reelection in order to devote time to building his private law practice with Charles Bliss in the law office of Hershey & Bliss. He continued his interest in politics and served two terms as mayor of Taylorville. He was also elected president of the

Christian County Bar Association for the year 1924-1925. His law practice grew and he found himself participating in a number of cases involving insurance. In addition to his law practice he also accumulated holdings in local banking and widespread farmlands.³

On May 27, 1912, he married Leah Stapleton of Assumption, a small farm town not far from Taylorville. Together they raised Auguste, born in 1913, and Richard born in 1916. The younger son followed his father into the legal profession while the elder made a career in the field of chemical engineering. Hershey became a Mason, and Elk, and an Odd Fellow. He was also an active member in the congregation of Taylorville's First Presbyterian Church.⁴

During the Depression he worked in the capital city of Springfield as the head of the liquidation division of the state's Department of Insurance, a position created partly in response to the financial disasters of the Depression. A lifelong Democrat, he served as a State Central Committeeman and was an early supporter of Governor Henry Horner, becoming a close and trusted friend of the governor. He was elevated to the post of chairman of the democratic State Central Committee for 1938-1939.⁵ His statewide significance to the Democratic Party was revealed when he became party's candidate the office of governor.

Henry Horner had ridden into the office of governor in the Democratic landslide of 1932. He served ably and with solid popularity until he suffered a crippling stroke in 1936 that took months of rest and recuperation before he could return to his office. As the general election of 1940 approached it was clear that Horner could not run. There was also a threat of declining support for Democrats in the state and nation. Lieutenant Governor George Stelle wanted the nomination. However, Chicago politician Patrick J. Nash traveled to Springfield to meet in the Executive Mansion and agreed with Democratic downstate leaders to run Harry Hershey for governor. Hershey won the nomination, but in the general election he lost to Republican Dwight

Green, another University of Chicago law school graduate who had a substantial reputation as a federal prosecutor in the pursuit of Chicago's organized crime.⁶

Having lost a major election at age sixty-two, Hershey returned to Taylorville uncomplaining about his defeat and grateful for all his friends.⁷ Nine years later Adlai Stevenson, the state's newly elected Democratic governor who had beaten Dwight Green in Green's attempt at a third term, appointed Hershey to head the Illinois Department of Insurance, an agency in which Hershey had experience. His expertise in the legal aspects of the insurance industry aided in his work in the American Bar Association's Section on Insurance Law.⁸ He ran the department from 1949 to 1950 after which he was picked to run in the state Supreme Court election in 1951 as a Democrat for the twenty-one counties of the second district.⁹

He ran against incumbent Justice Jesse L. Simpson from Edwardsville. It was a close race, but the campaign remained on a high level appropriate to a judicial election. The results from the June 1951, election showed that Hershey barely beat Simpson by fewer than 200 votes. Within weeks Republican committeemen from Simpson's county, petitioned the circuit court of Madison County for a re-count. There were no allegations of improprieties of any sort: Hershey and Simpson were both named as co-defendants in the suit, which claimed that there were errors in the vote-counting. The court ruled that Hershey won the seat on the Supreme Court by 184 votes out of a total exceeding 95,000 votes.¹⁰

Hershey served on the court from 1951 until his resignation in November 1966. He had entered the law profession near the beginning of the century and had witnessed many changes by the time he reached the Supreme Court bench. Yet his decisions were never out of date. In judging Hershey's tenure on the court his own colleagues held that "in many opinions he spoke for the court as it moved forward to improve legal procedure and to adopt rules of substantive

law to changed conditions.”¹¹ During his long career he adjusted and absorbed, for example, new tax laws, workmen’s compensation, anti-trust laws, and the enlargement of government. When he was serving as Chief Justice in 1961, he publically supported the proposal to replace the entire judicial article in the state’s 1870 constitution with new wording that would adapt the state’s judiciary to changed circumstances. Although neither Hershey nor the other justices could publicly support the new article, they privately expressed support for it.¹²

That the times are clearly reflected in matters that come before the court is illustrated in some of his opinions. In 1954, Hershey wrote the opinion that permitted the City of Chicago to construct the enormous water filtration place in Lake Michigan near Navy Pier. Hershey held that construction of the plant would not infringe on the rights of nearby property owners and suggested that, since the United States Army Corps of Engineers had issued a permit allowing the construction, the authority of the federal government would supersede local authorities.¹³ Hershey also wrote the opinion banning the book *Tropic of Cancer* from Illinois bookstores. Since average readers would not be able to comprehend the unconventional plot and character development, he reasoned, only the “obscene” portions would be clear to them.¹⁴

After fifteen years on the bench Hershey decided to step down before his term expired. Although the new judicial article in the constitution was in effect, he pointed out that there were “more cases and harder cases.” He said, “It is awfully hard work, and I am eighty years old.” A few months after his remarks he retired, and less than a year after that, he died on August 30, 1967, at St. Vincent’s Hospital in Taylorville, leaving behind his wife and two grown children. His funeral services were held at Taylorville’s First Presbyterian Church, and he was buried at Taylorville’s Oak Lawn Cemetery.¹⁵

¹ 39 Ill. 2d. xi (1968); Newton Bateman and Paul Selby, *Historical Encyclopedia of Illinois and History of Christian County*, 2 Vols. (Chicago: Munsell Publishing Co., 1918), Vol. 2, pp. 901-902.

² *Ibid.*

³ *Ibid.*; *Law Notes*, v. 28 (1924-1925), p. 114; *Chicago Tribune*, 1 September 1967, p. 12.

⁴ *Ibid.*; 39 Ill. 2d. xi (1968); *Historical Encyclopedia*, *op.cit.*

⁵ 39 Ill. 2d xi (1968); *Chicago Tribune*, 1 September 1967, p. 12.

⁶ Charles Van Devander, *Politics and People*, (New York: Arno Press, 1974 reprint), p. 284;

“Illinois: the Horner Pie,” *Time*, 22 April 1940, n.p.

⁷ 39 Ill. 2d. xi (1968).

⁸ ABA Section of Insurance, Negligence and Compensation Law Proceedings, v.1 (1940), pp. x-xii.

⁹ *Chicago Tribune*, 1 September 1967, p. 12.

¹⁰ *Chicago Tribune*, 3 June 1951, p. 1; *Chicago Tribune*, 11 July 1951, p. A7; *Chicago Tribune*, 14 July 1951, p. 5.

¹¹ Justice Walter V. Schaefer in the Court’s memorial to Hershey, 19 September 1968, 39 Ill. 2d. xviii (1968).

¹² *Chicago Bar Record*, v. 43, no. 5 (February 1962), pp. 247-250; *Chicago Bar Record*, v. 43, no. 2 (December 1961), p. 113.

¹³ *Chicago Tribune*, 25 May 1954, p. 5.

¹⁴ Quoted in Rosa Eberly, *Citizen Critics* (Urbana: University of Illinois Press, 2010), pp.98-99.

¹⁵ 39 Ill. 2d. xi (1968); *Chicago Tribune*, September 1, 1967, p. 12.