The Court Archive:
In Re Day

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Most people are aware of Myra Bradwell's and George Anastoplo's failed attempts to become licensed to practice law in Illinois. Most people are not aware of Henry M. Bay's attempt, which was a more important and precedent-setting case that confirmed the independence of the judicial branch.

In order to be licensed as an attorney for most of the19th century, a person simply had to obtain a certificate of good moral character and take an oral examination to demonstrate necessary legal knowledge. In the 1870s, the Supreme Court allowed graduates of law schools to forego the examination upon presenting a diploma along with the certificate of good moral character to obtain a license. In 1897, the Court eliminated the diploma-only method and created a Board of Examiners. Everyone in Illinois, regardless of legal education, had to pass a written exam to be licensed to practice.

In 1899, the Illinois legislature passed a law that allowed law school graduates to submit a diploma and certificate of good moral character to receive their licenses, in effect, restoring the earlier Supreme Court rule and subverting the newly created Board of Examiners.

Henry M. Bay (misspelled as Day in the *Illinois Reports*), and 179 other students petitioned for their license after receiving their law school diplomas and without examination. Bay had just graduated from Kent College of Law. Bar associations opposed Bay's admission, believing that a uniform test for everyone made the legal profession stronger and that the legislature had overstepped its separation-of-powers boundary.

The Illinois Supreme Court heard the case in April 1899, and issued its opinion in October in a 5-2 decision (181 Ill. 73). Chief Justice James Cartwright confirmed earlier court decisions in which attorneys are officers of the court, and as a result of the separation of powers clause, the Supreme Court had the power to determine eligibility to obtain a law license. In declaring the 1899 law unconstitutional, Cartwright noted that the legislature "overlooked the restraint imposed by the constitution and assumed the exercise of a power properly belonging the courts."

In a 1939 article, a legal professor proclaimed that *In Re Day* "is now followed generally throughout the country."

What happened to Henry M. Bay? He is not listed in the IARDC database and thus did not become licensed to practice. In the 1900 census, he listed his occupation as "Clerk-Insurance," and in 1910 and 1920 as a "Lawyer," but in 1930 was listed as an investigator for a private mortgage company. A spot check of several of the 179 other names indicate that most of the petitioners along with Bay ended up taking the written examination and then became lawyers. It is not known whether Bay took the exam and failed and did not bother to try again or just refused to take the exam on principle.