The Court Archive:
George Anastaplo

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In 1950, not long after the beginning of the Cold War, a member of the Illinois Supreme Court's Committee on Character and Fitness asked a young prospective attorney, "Should a member of the Communist Party be allowed to practice in Illinois?"

"I should think so," the applicant replied.

The committee member then asked, "Are you a member of the Communist Party?"

The young man refused to answer, arguing that it was irrelevant. The Committee declined to certify the young man, believing that a member of the Communist Party could not uphold and support the Constitution of the United States, and he was denied entry to the Illinois bar.

The interview began a decade-long struggle over George Anastaplo's admission to the bar. Representing himself before the Illinois Supreme Court, he appealed the Committee's decision. In *In Re Anastaplo*, 3 Ill. 2d. 471 (1954), Justice Joseph 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.

Undeterred, Anastaplo appealed to the U.S. Supreme Court, which declined to hear the case due to a lack of federal jurisdiction. After several subsequent decisions, notably *Konigsburg v. State Bar of California* that supported his position, Anastaplo requested a rehearing before the Committee on Character and Fitness in 1957. The committee again refused to certify him, and Anastaplo appealed to the Illinois Supreme Court in 18 Ill. 2d. 182 (1960).

In a 4-3 decision, the Illinois Supreme Court upheld the Committee's denial because "Anastaplo obstructed the proper functions of the Committee on Character and Fitness. By refusing to answer the Committee's questions, he failed to demonstrate the good moral character required

for admission to the Illinois bar." Justices George Bristow, Walter Schaefer, and Charles Davis dissented because they believed Anastaplo had proven proper character with testimonies from colleagues at the University of Chicago, his World War II record, and other activities.

The case was finally decided in 1961 at the United States Supreme Court in *In Re Anastaplo*, 366 U.S. 82 (1961). In a 5-4 vote, the U. S. Supreme Court affirmed the Illinois Supreme Court's decision, distinguishing *Anastaplo* from *Konigsburg* in that Anastaplo's non-cooperation was sufficient to deny bar admission.

However, Justice Hugo Black dissented, arguing that Anastaplo's First and Fourteenth Amendment rights had been violated. Black wrote: "Too many men are being driven to become government-fearing and timeserving because the Government is being permitted to strike out at those who are fearless enough to think as they please and say what they think. This trend must be halted if we are to keep faith with the Founders of our Nation and pass on to future generations of Americans the great heritage of freedom which they sacrificed so much to leave to us. The choice is clear to me. If we are to pass on that great heritage of freedom, we must return to the original language of the Bill of Rights. We must not be afraid to be free."

Two later developments add perspective to Anastaplo's story. Justice Joseph Daily entered a Chicago taxicab and was surprised to find Anastaplo behind the wheel. Daily told Anastaplo that no one really thought he was a communist and urged him to reapply for the bar.

By the 1970s, when anticommunist sentiment had subsided, Anastaplo's supporters once again urged him to reapply to the Illinois bar. He did not reapply, but the Committee on Character and Fitness voted 13-4 to certify him. But like Myra Bradwell a century before, Anastaplo refused to reapply on principle

Although he was never admitted to the bar, Anastaplo went on to a brilliant career teaching at the University of Chicago and Loyola University Chicago School of Law and producing scores of articles and books on the law. He died in Chicago in 2014 at the age of 88.