

James D. Heiple
1990-2000

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The author of the controversial 1999 “Baby Richard” adoption-case ruling, James D. Heiple was born in Peoria, Illinois on September 13, 1933, the son of attorney and banker Rae Crane and Harriet Lucille Birkett Heiple. Attending grammar and high schools in Washington, Illinois, James graduated in 1955 from Bradley University and in 1957 from the University of Louisville Law School. On July 28, 1956, he married Virginia Duffield Kerswill at First Federated Church in Peoria, and they would become the parents of two sons and a daughter.¹



After passing the Kentucky and Illinois Bar examinations, Heiple joined the family law firm of Heiple & Heiple in Washington. In 1959, he opened an office in Pekin, developing an extensive practice in municipal law and as corporation counsel for several municipalities. He also served as an appellate law clerk, a public defender, and a Special Master in Chancery.

In 1970, the Republican Heiple won election to fill a Tazewell County Circuit Court vacancy and two years later was retained for a full-six-year term, then retained

again in 1978. In 1980, he became a Justice of the Third District Appellate Court, twice elected the Presiding Justice, and in 1988, received a Master of Laws degree from the University of Virginia. During his career, Heiple served as the Illinois Judges Association president, Tazewell County Bar Association president, held memberships in the Illinois, Kentucky, and federal bar associations, and chaired councils of the Illinois State Bar Association. In addition to his legal career, he partnered in an insurance agency and became a director of two banks.

In 1990, Heiple sought the Third Judicial District seat on the Illinois Supreme Court to succeed retired Justice Howard C. Ryan. Heiple campaigned as a “Common Sense Choice” in the twenty-one Third District counties of north-central Illinois. During the contest, observers called Heiple “feisty, his own man, and a writer of rather harsh dissents” during his appellate tenure. “One law professor predicted Heiple would shake up the court more than any other candidate then running.”² He defeated Democratic Illinois Appellate Justice Tobias Barry by less than one percentage point.

On the Supreme Court, Heiple proved a conservative “law and order” justice. In the 1991 *People v. Davis* case, he wrote the opinion affirming the death sentence of Girvies Davis, who had been convicted in the Madison County Circuit Court for shooting an eighty-nine-year-old man in the course of a robbery. After the Supreme Court in 1983 upheld the conviction but issued a divided ruling on the sentence, the state’s attorney recommended life imprisonment. Then when the successor state’s attorney again sought the death penalty, lawyers for Davis argued before the Supreme Court that double jeopardy precluded the state from a second death sentence for the same conviction. “No

misrepresentations were made to the defendant regarding the maximum sentence he could receive,” Heiple wrote in the brief opinion. “Further, the subsequent decision to seek the death penalty in this case was based on prosecutorial discretion of a new State’s Attorney. Such scenario raises no *per se* presumption of arbitrariness or capriciousness under eighth amendment analysis” of cruel and unusual punishment.³

In the 1994 *In re Doe* case, Heiple wrote the unanimous opinion that returned “Baby Richard,” Daniel Kirchner, to his biological parents. The mother had relinquished her rights to the infant immediately after his March 1991 birth and refused to reveal the father’s name to the adoptive parents. Several months later, she told the father of the child’s existence, and he hired an attorney to challenge the adoption. Both the Cook County Circuit Court and First District Appellate Court agreed that the father had not shown interest in the boy within the first thirty days of his life, as required by law, thus abandoning his parental rights. The Supreme Court justices, however, reversed the ruling, excoriating the adoptive parents for proceeding with the adoption “when they knew that a real father was out there who had been denied knowledge of his baby’s existence.” Illinois adoption laws, Heiple wrote, “are designed to protect natural parents in their preemptive rights to their own children wholly apart from any consideration of the so-called best interests of the child. If it were otherwise, few parents would be secure in the custody of their own children.”⁴

Illinois Governor Jim Edgar joined the adoptive parents in petitioning the Supreme Court for a rehearing of the highly unpopular decision. “The court has construed the Adoption Act in a manner, which if it remains unmodified creates a dangerous

precedent for many adopted children,” read the petition. “It allows a biological father to claim at any time that he did not know of the existence of his child and move to vacate an adoption.” Edgar also supported and signed legislation that stressed a child’s best interests in disputed adoption hearings.⁵ But in an emotionally charged majority opinion, Heiple refused to grant the adoptive parents’ rehearing request.⁶ He criticized Governor Edgar’s involvement as a “crass political move” and accused Appellate Justice Dom Rizzi of ignorance of basic legal adoption principles. In addition, Heiple charged *Chicago Tribune* columnist Bob Greene with “journalistic terrorism” for extensive “false and misleading” articles, “designed to discredit me as a judge and the Supreme Court as a dispenser of justice by stirring up disrespect and hatred among the general population.”⁷

A series of professional difficulties during Heiple’s Supreme Court tenure emanated from four traffic violations in his home town of Pekin. During the last incident, in January 1996, police accused him of speeding, then fleeing the traffic stop. Initially demanding a jury trial, Heiple eventually pleaded guilty to the speeding charge and to ignoring police orders. In exchange, prosecutors dropped the more serious offense of resisting a peace officer.⁸

Neither the police incidents nor the disputes with Governor Edgar and columnist Greene deterred Heiple’s election by his fellow justices to the rotating position of Chief Justice. “It is clear that Justice Heiple has a hard work ethic,” evaluated editor Steven B. Levy in the DuPage County Bar Association Journal, “has self-reliant independence, is devoted to his family, has deeply felt religious convictions, has a desire for justice, and is an honorable and respected jurist. . . . His judicial independence, his libertarian (anti-

authoritarian) bent, and his unswerving sense of moral rightness seem to emanate from this strong philosophical root.”⁹

Heiple assumed the three-year term as Chief Justice in January 1997, succeeding Michael A. Bilandic. Later that month, the state’s Judicial Inquiry Board charged Heiple with misconduct for having repeatedly disobeyed police instructions during the Pekin traffic stops and for invoking his position to evade citations. In February, Justice Charles E. Freeman, a vocal Heiple critic, sought an Illinois Courts Commission investigation. “Considering the public’s perception of the court and the entire judicial system, starting with the Baby Richard case and the further damage done by the several traffic incidents involving Chief Justice Heiple,” Freeman asked his colleagues, “how can any member of this court even question the need for dialogue?”¹⁰

The Courts Commission established a panel to investigate misconduct charges against Heiple. In a contentious move, he appointed Justice Moses Harrison II, arguably his closest colleague on the Supreme Court, to chair the five-member group. Heiple requested that the Commission make its determination based on already filed briefs. “We elect not to refute,” his attorney stated.¹¹

Then in April 1997, for the first time in nearly 150 years, the Illinois House of Representatives unanimously authorized a bipartisan impeachment investigation of Heiple because of the Harrison appointment as well as Heiple’s much-publicized traffic stops.¹² In addition, the panel reviewed questionable lease arrangements for his Pekin law office and allegations regarding his choice of Appellate Justice William Holdridge, one of his former law clerks, to serve simultaneously as director of the Administrative Office of

the Illinois Courts. Two days after the Courts Commission censured Heiple for damaging “the court system’s integrity” and three days before the start of the House investigation, he reluctantly resigned his position as Chief Justice. “I refused to resign from the Supreme Court entirely; I had done nothing impeachable; and I was unwilling to allow my political and media enemies to prevail over my demise.”¹³

Former Illinois Governor James R. Thompson led the team of attorneys representing Heiple in the House proceedings, not only arguing the separation of powers within state government but also maintaining that none of the allegations merited removal from the Court.¹⁴ “It is our view that Chief Justice Heiple has a clear and undeniable property right in his office as a justice of the Supreme Court which neither this committee nor the House nor the Senate can deprive him of in violation of the constitution,” Thompson stated. After the hearings, the members voted 8-2 against impeachment.¹⁵

In December 2000, at the end of his ten-year term, Heiple did not seek retention on the Supreme Court. “It’s difficult to always be on the firing line,” explained his former publicist Thom Serafin. “But he fulfilled his term and feels he did it with a sense of dignity as a person who respected the law to the utmost.”¹⁶

In retirement, the widowed Heiple concentrated on operating two farms he owned near Peoria, while also vacationing at his Canadian cabin and rediscovering the enjoyment of reading. “While on the bench,” he said, “I had to read so much—many hours every week—that I avoided reading for pleasure, but now I can enjoy a range of books by a variety of authors.”¹⁷ He also continued championing the rights of biological parents in contested adoption cases. In 2003, he attended a reception honoring

psychologist Karen Moriarty, author of *Baby Richard; A Four-Year-Old Comes Home*. Moriarty wrote that the boy had adjusted well to life with his birth parents and two younger sisters. “He’s always so happy,” she told reporters. “He just got straight A’s on his last report card.”¹⁸

In 2011, Heiple responded to an Internet story that a Guatemalan court had returned a child from her U.S. adoptive parents to her native biological family. “If . . . the best interests of the child is to be the determining factor in child custody cases,” he wrote in a colorfully worded agreement with the decision, “persons seeking babies to adopt might profitably frequent grocery stores and snatch babies from carts when the parent is looking the other way. Then, if custody proceedings can be delayed long enough, they can assert that they have a nicer home, a superior education, a better job or whatever, and that the best interests of the child are with the baby snatchers. Children of parents living in public housing or other conditions deemed less affluent and children of single parents might be considered particularly fair game.”¹⁹

¹ *Illinois Bar Journal*, January 1997, p. 6; “Justice James D. Heiple, Supreme Court of Illinois,” Heiple vertical file, Illinois Supreme Court Library, Springfield, IL.

² *State Journal-Register* (Springfield), 25 September 1994, pp. 1, 7.

³ 144 Ill. 2d 349-53. In 1986 and again in 1987 the Supreme Court had denied a Davis appeal (112 Ill. 2d 78, 119 Ill. 2d 61), and in 1994 the U.S. District Court and the Seventh Circuit Court of Appeals denied his petition for federal *writ of habeas corpus*. He was executed in 1995.

⁴ 159 Ill. 2d 347-72.

⁵ *Chicago Tribune*, 6 July 1994, Sec. 1, p. 7.

⁶ *Chicago Tribune*, 8 July 1994, pp. 1, 7.

⁷ 159 Ill. 2d 365-67; *State Journal-Register*, 13 July 1994, pp. 1, 3.

⁸ *State Journal-Register*, 27 September 1996, p. 1.

⁹ *Daily Herald* (Arlington Heights), 2 October 1996, Heiple file, Illinois Supreme Court Library.

¹⁰ *Chicago Sun-Times*, 12 February 1997, p. 16.

¹¹ *Chicago Tribune*, 25 March 1997, Sec. 5, p. 1.

¹² The previous Illinois House effort to remove a judge took place in 1842-1843, when legislators targeted Supreme Court Justice Thomas Browne. His attorney, Abraham Lincoln, successfully argued against impeachment; the attempt failed by a nearly unanimous vote. Bryon C. Andreasen, *Defending Judge Browne: A Case Study in the Legal, Legislative, and Political Workings of Abraham Lincoln's Illinois* (Springfield: Supreme Court Historic Preservation Commission, 2013).

¹³ Heiple to Supreme Court "Colleagues," 2 May 1997, Heiple file, Illinois Supreme Court Library; Karen Moriarty, *Baby Richard: A Four-Year-Old Comes Home* (Palm Coast, FL: Open Door Publishing, 2003), p. 407; *Chicago Tribune*, 3 May 3, 1997, pp. 1, 14.

¹⁴ *Chicago Tribune*, 29 April 1997, Sec. 2, p. 6.

¹⁵ "Justice James D. Heiple: Impeachment and the Assault on Judicial Independence," *Loyola University Chicago Law Journal*, 29 (1998), pp. 741-840; "Heiple Impeachment Report," rpt. in *Chicago Daily Law Bulletin*, 16 May 1997, p. 3; *Chicago Tribune*, 30 April 1997, Sec. 1, pp. 1, 8; 1 November 1998, Sec. 1, p. 2.

¹⁶ *Chicago Sun-Times*, 7 December 1999, p. 19.

¹⁷ Moriarty, p. 399.

¹⁸ *Chicago Sun-Times*, 18 November 2003, Heiple file, Illinois Supreme Court Library.

¹⁹ familypreservation.blogspot.com/2011/08