

MEMORIAL SERVICES

HELD IN THE SUPREME COURT OF ILLINOIS AT THE NOVEMBER TERM, 1950, ON THE LIFE, CHARACTER AND PUBLIC SERVICES OF THE LATE MR. JUSTICE ELWYN R. SHAW

At the hour of two-thirty o'clock P.M., November 16, 1950, other business being suspended, the following proceedings were had:

Mr. CHIEF JUSTICE SIMPSON:

This hour has been set aside for the purpose of receiving a memorial touching the life and public service of the late Mr. Justice Elwyn R. Shaw. The court will be pleased to hear from the representative of the Illinois State Bar Association, Mr. Joseph H. Hinshaw.

Mr. JOSEPH H. HINSHAW:

May it please the court: On behalf of the Illinois State Bar Association, I have the honor to present this memorial of the life of the late Elwyn Riley Shaw, Judge of the United States District Court for the Northern District of Illinois, and, for nine years, Justice of this Honorable Court.

Elwyn Riley Shaw was born on October 19, 1888, in Lyndon Township, Whiteside County, Illinois, son of William H. and Ella Moore Shaw. His father was a banker and owner of a grain elevator. After attending the elementary schools and high school at Sterling, Illinois, he received the degree of LL.B. from the University of Michigan, in 1910. He was admitted to practice law in Illinois in the same year.

His first association in the law practice was with William N. Cronkrite, of Freeport, Illinois. In 1913 he opened his own office

in the same city. The flood of clients who sought his services soon forced him to restrict his practice. He presented his last divorce case in 1919, and conducted his last criminal defense in 1923. He continued his heavy practice in Freeport until 1933.

Throughout his life, he was a member of the Democratic Party, and his brilliant career in politics was earned in an area consistently and predominantly Republican. In an early test of political strength, he was elected to the Board of Education, in Freeport. During the same year he was nominated, by acclamation, as the Democratic candidate for Justice of the Supreme Court of Illinois, from the Sixth District.

He served with distinction, as Justice of this court from 1933 until 1942, and as Chief Justice from 1938 to 1939.

In 1943, under appointment by the President, during bitter railroad labor disputes, he served as a permanent member of the National Railway Mediation Panel, hearing numerous national labor controversies.

In 1944, he was appointed by President Franklin D. Roosevelt as judge of the District Court of the United States for the Northern District of Illinois. As judge of the District Court, the greater part of his time was spent in the Western Division of that court, at Freeport; but he very frequently presided in the Eastern Division of the court, at Chicago.

On June 26, 1913, he married Miss Edith Griffin, of Battle Creek, Michigan, who died in 1942. From this union, two daughters, Miss Mary Margaret Shaw, of the Chicago Bar, and Joan Shaw, (Mrs. Richard Wayne Dirksen,) Bethesda, Maryland, survive. In 1944, he married Miss Mildred J. Voigt, who survives him.

Judge Shaw maintained that "the biggest moment" of his life came when, as Chief Justice of the Supreme Court of Illinois, he admitted his daughter, Mary Margaret, to practice at the Illinois Bar. Mary Margaret is now practicing in Chicago, associated with the law firm of Concannon, Dillon and Snook.

Elwyn Riley Shaw was a member of the Stephenson County, Chicago, and Illinois State Bar Associations. He was a Presbyterian, of the First Presbyterian Church of Freeport. He was a thirty-second degree Mason, a member of the Elks, and of the Freeport Country Club.

On July 18, 1950, after a career of forty years as a lawyer and judge, Elwyn Riley Shaw died suddenly at his home, near Cedarville, Illinois, as he was preparing to preside at Chicago in a criminal case involving an appeal for a reduction of a sentence for counterfeiting which he had formerly imposed as a judge of the district court. His mortal remains are interred at the Oakland Cemetery, Freeport, Illinois.

I move that this memorial be spread upon the records of this honorable court, and that the Official Reporter of Decisions be directed to publish the record of these proceedings in the official reports of this court.

Mr. CHIEF JUSTICE SIMPSON:

The court will be pleased to hear at this time from the president of the Stephenson County Bar Association, Mr. Robert P. Eckert:

Mr. ROBERT P. ECKERT:

May it please the court: It is my privilege to participate in this memorial service on behalf, and as president, of the Stephenson County Bar Association. I represent, and speak for, the members of that association in honor of the memory of a former member and fellow lawyer, the late Mr. Justice Elwyn R. Shaw. But because of my long association with Judge Shaw as friend and neighbor I shall find it difficult to confine myself to a formal and impersonal tribute.

His life, compared to the average life we know today, was brief, but it was a life filled with high achievement. The years of 1888 to 1950 offered to Judge Shaw great opportunities for public service, opportunities which he always welcomed. To that public service he brought great honor.

Those years were filled with industry, achievement, friendship, kindness, and devotion to family and friends alike. Those years were filled with activity in many and varied fields of endeavor. Those years brought him happiness and success in the legal profession, both at the bar and on the bench. And during all those years no position of influence attained as lawyer, judge or public servant could rob the man of the joy of living and of the happiness he found in service to others.

From a boyhood spent at Lyndon, where Judge Shaw attended grade school, from a youth spent at the high school in Sterling, from a young manhood at the University of Michigan, Judge Shaw, proud of his degree of Bachelor of Laws which the University had awarded him, came to Freeport in 1910 to enter the practice of law. Upon his admission to the bar of Illinois that same year, he began practice in Freeport in the office of William N. Cronkrite, one of the outstanding practitioners of his generation.

Three years later, with the energy and enterprise which was characteristic of him throughout his life, Judge Shaw entered upon a practice of his own. During his years as a lawyer, before his election as a justice of this court, he established for himself the reputation of being one of the ablest trial lawyers who had ever practiced in northern Illinois. During those years his offices were directly across the hall from those of my father, and long before my own admission to the bar, I knew him as a man of kindness and friendliness, a man interested in the activities and hopes and desires of young men and women aspiring to the legal profession.

With the passage of years it was my privilege to know him as a fellow member of the bar, to serve for a brief period as one of his secretaries when he was a judge of this court, and to practice before him as a judge of the United States District Court.

As his secretary, I was tremendously impressed always with the keenness of his mind, which rapidly and unerringly found the underlying legal principle, no matter how hopelessly it seemed lost in a mass of unrelated and irrelevant material. His respect for sound legal principles, and his insistence upon their application, brought him respect from lawyers and laymen alike.

Interwoven with that high regard for legal principles was an equally high regard for ultimate justice. I can recall many times seeing him walking up and down his office, his face tense, eagerly trying to find the solution which would be just and equitable, and which would bring honor, not to himself personally and selfishly, but to the court and to the vast, abstract body of the law to which he had a singular devotion.

Those were the characteristics he brought to this court when he was elected a justice in 1933. It was those characteristics which distinguished his career as a member of this court. It was those characteristics which quickly proved to his colleagues, and to the

bar of Illinois, his outstanding ability, his devotion and fidelity to the trust which the people of northern Illinois had confided to him. A man of boundless energy, he was tireless in his work. He was an able and conscientious Chief Justice during the year 1938-1939.

As Judge Shaw himself said in a memorial service conducted in this court in memory of a predecessor: "Much has been said, and much more could be, concerning his work on this court. No special memorial concerning that work . . . is particularly needed. What he did in the Supreme Court . . . is permanently a part of the official archives, for all to read who will. That part of his life which is not a part of the public records is mostly to be found in the recollections and minds of his fellow citizens in the northern part of the State where he was so long a public servant. Few of these things are a matter of record, but I wish that some of them may be made so. All those who read the published reports of decisions of this court, know of his judicial attributes as a judge of a court of review. They know of his great ability to analyze a case in which he was assigned to prepare an opinion. They know that he could reduce it to its essentials, bring it down to one or two decisive points, and decide those points directly and succinctly. They also know of his willingness to refrain from commenting on contingencies not before him in the record then under consideration, and to refrain from the use of *dictum*. These judicial attributes are now recorded, and well known to the profession."

In 1943, Judge Shaw was appointed a member of the National Railway Mediation Board, serving on a number of emergency boards in hearings on national labor disputes. In that capacity he earned the respect of widely divergent groups. He was fearless and tireless in his search for fair and equitable values, principles of justice and equity which might successfully solve the pressing problems presented in that critical period of national affairs.

The following year he was appointed judge of the United States District Court for the Northern District of Illinois, in which capacity he was serving at the time of his death. To this judgeship he brought the vast experience which he had acquired as a practicing attorney, and the mature, judicial judgment which he had acquired as a member of this court. To the Federal bench he brought absolute impartiality and unfailing courtesy to litigants, witnesses and counsel alike. He brought that high regard for legal

principles which had been such an integral part of his life. Again the keenest of intellect was manifest in his rapid and unerring detection of the underlying legal principles. There was again a constant insistence upon their application in all cases, regardless of any extraneous, irrelative facts or outside influence.

At a period in American history when the independence of the judiciary was a matter of public concern, Judge Shaw gave confidence to the people that the courts of the land were and would remain free and independent. His work in this court, and on the Federal bench alike, was evidence of the fact that he was motivated solely to declare the law as he found it, and to do justice wholly unaffected by personal or political considerations. In his devotion to principle lies probably his greatest and most valuable contribution to the law and to the courts of this State. He constantly manifested a great and earnest devotion to duty even in the face of ill-health.

His ideals as a man and as a judge were high. His pride in the law was an outstanding characteristic of his life, but it was a pride in a law which respected the highest ideals of man. I well remember his comment at one time upon immortality. His reference was to the late Mr. Justice Cartwright. He said that it was impossible not to believe in immortality, when one thought of a mind such as the mind of Judge Cartwright; that in the passing of the physical body the achievements of that mind must somehow remain. I find it equally hard to believe that the vast mental achievements of Judge Shaw have gone with his passing. They must live on.

In behalf of the bar of Stephenson County, Illinois, I respectfully move that this memorial be received and spread upon the records of this court.

MR. CHIEF JUSTICE SIMPSON:

The court will be pleased to hear at this time from the representative of the Chicago Bar Association and former president of the Illinois State Bar Association, Mr. Benjamin Wham.

MR. BENJAMIN WHAM:

May it please the court: On behalf of the Chicago Bar Association it is my privilege to participate and speak for the members

of that association on this occasion when we meet to honor the memory of the late Mr. Justice and Federal Judge Elwyn Riley Shaw.

For 40 years he was a highly respected member of the Freeport Bar Association and for 17 years of the Chicago Bar Association. Although I have been selected by the latter association as its speaker, I am confident I speak the sentiments of all of the lawyers in Illinois; they were his friends and have been honored by his membership in the profession.

After receiving his bachelor of laws degree from the University of Michigan in 1910 and his admission, the same year, to the bar, he entered the practice of law in the city of Freeport and continued until 1933.

In that year his distinguished career as a jurist began with his election to the Supreme Court of Illinois where he served until 1942. He was Chief Justice during the year 1938-39.

It was during his service on the Supreme Court that I became acquainted with Justice Shaw and from that time until the date of his untimely passing it was my privilege to know him as a friend and fellow citizen and to practice law before him.

Following his retirement from the Illinois Supreme Court, Justice Shaw was a member of the National Labor Railway Panel and chairman of Presidential Emergency Boards for settlement of national labor difficulties.

In May, 1944, he continued his career as a jurist upon his appointment as a judge of the United States District Court for the Northern District of Illinois. He served there with great distinction until his death.

Mr. Justice Shaw was unusually well qualified by temperament for the duties of the office of a judge. He was calm, studious, careful, of sound judgment and had the most profound respect for the law and the courts. He recognized the important function of the judiciary in the State as a separate and distinct department of the government and its relationship to the citizens. His every act as a justice in this court and as a judge of the Federal court was to stimulate the faith, trust and confidence of the people in our courts. It was his belief that the constitution of the United States is a keystone of our republic and the citadel of the liberties of the people and during his long and useful life in and out of judicial

office, he diligently and vigorously endeavored to uphold and maintain these principles.

There are many examples but I would like to refer particularly to two: He did not hesitate to declare the rent control law unconstitutional on the ground Congress could not delegate its powers in so sweeping a manner affecting the rights and liberties of such large numbers of our people; and on the morning of his death he was preparing to return to Chicago to hear arguments on a motion relating to a prisoner whom he had previously sentenced. He wanted to be sure that his sentence had been just.

All through his life he was a student of Lincoln and gained deep inspiration from Lincoln's writings, and in his decisions he made constant effort to achieve that simplicity of utterance, clarity of ideas and human understanding which always marked Lincoln's addresses.

Elwyn Riley Shaw was not only a splendid judge but a good man. His interests and activities were many. He was a member of the Presbyterian Church; and he was interested in the Masonic Fraternity. He was a member of the American, Illinois, Chicago and Stephenson County Bar associations and during all of his professional life took an active interest in bar association affairs.

His life as a justice of this court has been inscribed in its records. These will forever be a monument to his memory. His friends and neighbors are proud of this record. In addition, they will not forget his friendliness, his smile, his good nature and his love for the simple things in life.

In his passing not only the citizens of Chicago and Freeport but the entire State have lost a distinguished and an outstanding public servant.

On behalf of the Chicago Bar Association I respectfully move that this memorial be received and spread upon the records of this court.

Mr. CHIEF JUSTICE SIMPSON:

We will now be pleased to hear Mr. John P. Devine speaking on behalf of the family.

Mr. JOHN P. DEVINE:

May it please the court: It was my privilege to know Judge Shaw for twenty years. Our acquaintance commenced when he

was actively engaged in the law practice at Freeport, Illinois, where he resided during his entire professional career. Recently, I received a letter from an attorney in a western State who had notice of this memorial through the Illinois Bar Journal who stated that he and Judge Shaw entered high school at Sterling, Illinois, in 1903, and he described the judge as a brilliant and industrious student. Judge Shaw possessed an unusually keen mind and a retentive memory. These qualities coupled with limitless energy made him successful in his chosen profession.

A graduate of Michigan University at 21 years, he immediately began the practice of law and followed that profession as lawyer and judge for forty years. In his practice he soon established himself as a wise counsellor and an able trial lawyer and at an early age took rank with the foremost members of the bar.

After twenty years of active practice he was elected a member of this honorable court. The nine years he served here, I believe, were the most enjoyable and interesting of his legal career. He often spoke of his association with the members of this court in happy recollection and with deep respect. His judicial career was somewhat unusual in that most judges advance from trial courts to courts of last resort. In his case the order was reversed. As judge of a Federal Court he became a trial judge. His record in that court ranks high as shown by affirmances of cases appealed. As trial judge he was willing to assume responsibility and in a proper case give a peremptory instruction directing a verdict. It seems to me his qualities as man and judge were beautifully set forth in the editorial appearing in the *Rockford Morning Star* the day after his death, from which I quote:

"Elwyn R. Shaw's approach to the law was humane and philosophical, rather than rigid and mechanical. He found in Lincoln's writings his deepest inspiration. Often, in his letters and conversation, he referred to Lincoln, and in the writing of his decisions, there was a constant effort to achieve that simplicity of utterance, that clarity of idea, and something of the human understanding that marked Lincoln's addresses.

"Judge Shaw was not a martinet in his court, although he could be severe when he felt that his essentially humane spirit was being imposed upon by a defendant seeking to work a fraud; or when he felt that the Government, with a cold evasion of humanity

and in the interest merely of rigid law, was pressing too hard on a defendant.

"He was not content with the slick, smooth surface of the law. The law had its own terrain; some features of it had been well explored and tradition was ample guide; but there were other features which would bear exploration, and he was not afraid to be the explorer. His famous rent decision, which the Supreme Court, to its discredit, reversed without proper examination, was a thoroughgoing exploration of the problem of granting local option under a general Congressional mandate. We have a feeling that future law-makers will turn back to the Shaw decision, which was simply and concisely written, as a landmark in a moot field of Federal statute."

On behalf of his family I wish to express their appreciation of the thoughtfulness of this court and the Bar Association and its officers and members for holding this memorial service.

To Judge Shaw as a family man, I wish to pay tribute. He was not only interested in his duty as a husband and father but took great pride in the achievements of his family. He told me that one of his proudest moments in this court was the day, as Chief Justice, he presented his own daughter, Peggy, with her license to practice law, and I am happy to say to you she is progressing as an able young member of the bar. His younger daughter, Joan, brought equal happiness and pride to his heart and kept him delighted with her role as a young mother and at the same time serving as inspiration to her husband, Wayne Dirksen, in his chosen career as musician and composer. Judge Shaw was like every other grandfather regaling his friends with stories of the pranks and antics of his grandchildren. In 1941, his wife, Mary Edith Shaw, mother of the two daughters mentioned, died. In 1944 he married Mildred J. Voigt, who now survives him, and many members of the bar can recall the happy companionship of Judge and Mrs. Shaw and their gracious hospitality to members of the bar as well as to their friends, at his beloved Cedarville home. There he was happiest surrounded by the lovely trees and flowers and his loved ones. And it was indeed apropos that when Judge Shaw answered his summons to eternity it was from the spot that was most hallowed in his heart.

Mr. CHIEF JUSTICE SIMPSON :

The court has received with interest and appreciation the remarks expressed by the friends and associates of the late Mr. Justice Shaw. Mr. Justice Gunn will respond on behalf of this court.

Mr. JUSTICE GUNN :

It is indeed a privilege to respond to the impressive memorial to the memory of our late associate Justice Elwyn R. Shaw, and to the eloquent and dignified presentation to the court. It is, however, unfortunate that one more gifted in the use of language was not chosen for that purpose, and hence the plain words of a friend must suffice to concur in this public manifestation of sorrow and respect.

I had never met Judge Shaw before we became associates on this bench, but in the four years of that relation I came to know him intimately, love his manly and forthright qualities, to respect his integrity and ability, and, with the profession that knew him so well, mourn his early death.

I do not believe any group of men come to know more intimately and better the mental and social character of each individual thereof than those of an appeal court, where every reason, objection and argument for or against the matter under consideration must be advanced before it can be accepted as the deliberate judgment of the court.

As a man Judge Shaw was frank and open, with a kindly, jovial and happy disposition. As a lawyer he was acute, quick, industrious, positive and decisive. As a judge he admired and profoundly believed in our American system of courts and government. He condemned arbitrary judgments and usurpation of authority; administered justice conformably to law, and was inflexible in executing its mandates.

Judge Shaw was Chief Justice when I came to this court. Within four days after my election he had called me to Springfield to take the oath, assigned my work for the ensuing term, and explained the divergent views of the court on several cases where they were in hopeless deadlock, and where my decision would decide the cause. I recall this circumstance because it was char-

acteristic of the man and the judge. If he had something to do, he did it promptly, decisively, and with as few words as possible.

Judge Shaw was a man of very strong opinions, and advocated them with intense energy, and when his mind was once convinced he retained that same view then and thereafter, even after reaffirmances of the original decision. He was a tireless worker, and expressed his views tersely, and consequently most of his opinions were short, and decided only the point involved. He indulged in very little *dicta*, nor did he often make a preliminary statement of common principles as an approach to his conclusion, but took it for granted that counsel, as well as his associates, knew, or should know, without a reminder, the axioms which are the foundation of the law.

Judge Shaw was especially qualified in contract, insurance and kindred subjects, and his knowledge of these branches was so profound that his omission to preface his conclusion with historical and bibliographic references tended to obscure his mastery of the subject. Had he chosen to include in his opinion in *Sundquist v. Hardware Mutual Insurance Co.* 371 Ill. 360, where he persuaded the court to overrule prior law, that in civil cases involving arson the burning must be established as in criminal cases, beyond a reasonable doubt, it would undoubtedly be considered a masterpiece of learning and logic. But Judge Shaw was interested in results, not display of learning; prompt action, not delay; and clarity in the expression of his opinion. His frequently expressed view was contained in the statement "Justice delayed is justice denied."

In his personal relations he was affable and kindly. He enjoyed sports, and the company of his fellow man. He was a man of the highest integrity and unimpeachable honesty. During his nine years as a member of this court over three hundred fifty cases were prepared by him and announced under his name. Many of these involve very important questions arising out of the economic breakdown of the late twenties and early thirties, and constitute landmarks to follow should similar misfortune again recur.

Judge Shaw probably enjoyed his work on the United States Court better than as an appeal judge. It gave him more opportunities for exercising his many talents, untrammled by the many strict and technical rules of appellate procedure.

Judge Elwyn R. Shaw has made his place in this world. He has left surviving him a fine family and a multitude of friends to mourn him. He has established himself as an expert and efficient officer of the court in the most exacting profession in the world. He has inscribed in the permanent records of this court his learning, in his many opinions, and, as these proceedings amply demonstrate, his entire career furnishes an outstanding example for others to emulate.

I confidently believe Judge Shaw would have chosen no different manner for his departure, had it been his choice to make. He believed and practiced prompt action,—no delay,—“call the next case.” He will be missed, but not forgotten.

We concur in all that has been presented today, and add these few words to the record of a life worth remembering.

MR. CHIEF JUSTICE SIMPSON :

The memorial service to the late Mr. Justice Shaw and the remarks relating thereto will be spread upon the record of this court and copies thereof will be sent to the family of the late Justice Shaw by the Reporter of Decisions.

As a further mark of respect this court will now stand adjourned until 9:30 A.M. tomorrow morning.

REPORTS
OF
Cases at Law and in Chancery

ARGUED AND DETERMINED IN THE

SUPREME COURT OF ILLINOIS.

VOLUME 407

CONTAINING CASES IN WHICH OPINIONS WERE FILED IN SEPTEMBER
AND NOVEMBER, 1950, AND CASES WHEREIN REHEARINGS WERE
DENIED AT THE NOVEMBER, 1950, AND JANUARY, 1951,
TERMS. ALSO TABLE OF CASES ON LEAVE TO APPEAL
AND WORKMEN'S COMPENSATION DOCKETS FOR
THE JANUARY, 1951, TERM.

EDWIN HILL, COOKE,
REPORTER OF DECISIONS.

BLOOMINGTON, ILL.

1951.