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Justice James A. Dooley

Philip H. Corboy

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was admirable. He remained a fervently loyal alumnus of Loyola University's law school, and he generously served for many years as chairman of the Board of Trustees of Clarke College in Iowa. For us on the court, his vitality was manifested by dropping into chambers to discuss matters of the moment: judicial administration, opinions, physical fitness, his farm. His vitality was manifested by his unhesitating disagreement where he felt disagreement was warranted. His vitality was manifested by the use of animated language and forceful arguments. He was an eclectic: his writings displayed literary analogy and frequent historical reference. (Coke, Blackstone, Holmes and Cardozo were favorites.) In short, Jim generated excitement. Indifference was an impossible luxury when he was around—and when he wasn't. So even now, though his memory includes sadness over his loss, it ironically induces vivid images of excitement, enthusiasm, contrariness, adaptability, decisiveness, candor, humor.

We miss him.

JUSTICE JAMES A. DOOLEY

PHILIP H. CORBOY

Memorializing Mr. Justice James A. Dooley, who served on the highest tribunal in this State's judicial structure from 1976 to 1978, reminds me of my first acquaintance with him. In the Spring of 1948, as a student in my third year of law school at Loyola University, I had the responsibility of presiding at a Phi Alpha Delta law fraternity function. My duties included introducing Mr. Dooley, who was a former justice of Webster Chapter of the fraternity. Although he was then less than eleven years out of law school, his talk to the embryonic lawyers—class of 1949— was hypnotic.

His economy of words, his enthusiasm, his belief in the subject matter, his competence, his intelligence, his persuasiveness, were all patently *there*. Remarkably, in this same man in juxtaposition to these attributes of the trial lawyer were manifest those of sincerity, honesty and humility. He did not patronize the unsophisticated law students; he spoke neither over their heads nor down to them. In delivering his version of trial tactics in a personal injury lawsuit, he "rapped" with them and they understood him.

I was next exposed to this charismatic advocate when I listened to him give a final argument in the then famous case of *Smith v. Illinois Central Railroad*, which was eventually reported in *Smith*

v. Illinois Central Railroad Co., 343 Ill. App. 593 (1951). In arguing in the courtroom of Superior Court Judge Harold G. Ward, Mr. Dooley, on behalf of a 24-year old man who had suffered the loss of both legs in a railroad crossing case, persuaded the jury to grant a verdict in the amount of \$185,000.00. At that time, this was the largest verdict in the State of Illinois in a personal injury case. It was now 1950, but to this young lawyer it was *deja vu*. It was as if I had looked and had listened and had been enthralled just the day before. It was lawyering at its best.

This was but one of many, many cases in which Mr. Dooley's powers of advocacy were employed on behalf of a maimed, orphaned, or spouse-deprived victim of modern society. In those early days of true tort law reform his voice for the deprived and under-privileged demanded and acquired the ears of the legal establishment. His god-given and personally honed gifts were utilized in literally hundreds of courtrooms throughout his thirty nine years as a trial lawyer. Early in his career, he ascended to the rank of the dean of trial lawyers in this state.

His trial advocacy skills, though mostly employed in the Cook County courts, were not unrecognized in other parts of the legal world. He was President of the Association of Trial Lawyers of America in the rising years of its eminence (1953-54). The Fellows of the International Academy of Trial Lawyers elected him their President in 1960. His Alma Mater, Loyola University School of Law, class of 1937, made him the recipient of its medal of excellence in 1967. In 1959 he was President of the Law Science Academy, and in 1960 the Academy conferred upon him its gold medal. In 1976 the Society of Trial Lawyers awarded him its Citation of Merit. He also served as a delegate of the Illinois State Bar Association at the International Congress of Comparative Law in Paris, France.

These and many other honors came to James A. Dooley during his professional career. None who knew him was surprised that he received them. He was of the breed that should have won them. He was supposed to receive them.

But trial lawyer, jury lawyer, *nisi prius* lawyer, and persuader of people lawyer Dooley had legal talents in excess of his trial court accomplishments. Loyola has supplied many, many fine lawyers to that discipline of the law known as litigation. It is, of course, not the purpose of this remembrance to demean the trial lawyers of Loyola or of any other educational establishment. But James Dooley in addition to being the dean of trial lawyers for his generation, was much more than that. He was also an accomplished appellate lawyer. His briefs, again usually in support of a tort-victim plaintiff, were the epitome of the same characteristics which placed him at

the top of the trial lawyers for nearly four decades. They were all inclusive—yet concise; they were classically argumentative—yet persuasive; they were partisan—yet completely within the record; they were scholarly—yet lucid. Most of his appellate practice was as attorney for the appellee in which he was required—with consummate success—to justify and sustain a judgment on behalf of his injured client. But in those rare instances that victory eluded him in the trial court, he would engage in the appellate process with the same zeal, dedication, and professionalism required before a jury or trial judge.

From 1940 to 1976 the “James A. Dooley for Appellee” or “James A. Dooley for Appellant” designation appeared in close to one hundred decisions in the Illinois Appellate and Supreme Court reports. His appellate advocacy was the genesis of many important opinions germane to the law of damages, negligence, due care and evidence. His trial skills, combined with his mastery of appellate procedures, truly identified him as the compleat lawyer.

When Tolstoy suggested that “men gain by experience”, he did not have James A. Dooley in mind. I make this statement because I am told that even those who knew him as a grammar school student at St. Thomas Aquinas Roman Catholic School on the west side of Chicago, at Campion High School in Prairie Du Chien, Wisconsin, and as an undergraduate at Loyola University remember him as a young man who was experienced in life all of his life. He was sagacious and aware of people and was an excellent judge of people even in his tender years. This knowledge of people certainly was the “x” factor which contributed to his success in choosing, deleting and persuading jurors. Jim Dooley never experienced the metamorphosis from callow lawyer to experienced advocate. He was always the virtuoso.

His fame, his professional accomplishments, his knowledge not only of the law, but of the Illinois court system, his writing ability, his analytical mind and his many years of practicing law at its zenith, supplied him with those attributes which precipitated his running in a contested primary and then in a contested general election for a vacancy on the Illinois Supreme Court created by the retirement of Justice Walter V. Schaefer. He was elected as a representative on that Court from the first district by a plurality of close to two to one.

His knowledge of the civil practice act, the rules of evidence, the Illinois common law and the Illinois statutory fiats, would have made him a good Supreme Court Judge. His incredible brightness, his insatiable appetite for work, his imagination, his demands for justice, made him, in the brief time that he was on the Court, a great

Supreme Court Justice. From December 6, 1976, to March 5, 1978, the date of his death, he participated in seventy-one opinions. His extraordinary labor habits accounted for his delivery of thirty-six opinions in which he spoke for the majority of the court; he specially concurred in nine others. At his induction on December 6, 1976, in explaining how his legal philosophy would guide him on the Court he specifically alluded to the need for adhering to *stare decisis* so that there would exist a continuity in the body of law upon which Illinois lawyers could rely in their day-to-day practices. But he also believed that a Supreme Court Judge should not slavishly adhere to prior decisions in construing the common law or the Constitution of the State of Illinois or of the United States. He said that a Supreme Court Judge must recognize the need for growth and for change to accommodate the everpresent social changes of the community. This philosophy undoubtedly contributed, in the fifteen months he sat on the Court, to his authoring twenty-two dissents and two additional opinions in which he concurred in the dissent.

Like those of Oliver Wendell Holmes whose dissenting opinions became the law of the land, the views expressed in Justice Dooley's straight-forward, cogent, uncompromising dissents, predictably, will be codified in future Illinois case law.

Mr. Dooley's professional extra-curricular activities allowed little time for serenity. In addition to visiting and speaking at many out of state law schools, he guest lectured at five of the local law schools—Loyola, John Marshall, Chicago, Northwestern and DePaul. He lavishly contributed his time to continuing legal education seminars, sponsored by the Chicago Bar Association, the Illinois State Bar Association, the American Bar Association, the Illinois Trial Lawyers Association, the Association of Trial Lawyers of America and other organized law groups. He was in constant demand by these lawyer trade-unions. It was rare, indeed, when not actually engaged in court, that his professional time was not occupied in drafting or refining a speech or writing needed for tomorrow's exercise in post law school education. In short, anywhere, anytime, anyplace he could be found hunched over and left-handedly working on assignments destined to help other lawyers.

Like many advocates and many judges, he had a heavy professional schedule; like few lawyers and few judges, his was prodigious. By his standards it required unceasing devotion to work, work, work.

Though a dedicated lawyer, his mode of life was not that of the preoccupied professional. His propensities included a personal physical fitness program that would have enervated many men ten to fifteen years younger. He could often be found late in the evening

finishing twenty or thirty laps in the swimming pool of the Chicago Athletic Club. His interest in charities, particularly those involving Loyola University School of Law, kept him aware of the fiscal needs of private institutions. Only a short time before his death he contributed \$100,000.00 to this University's Law School. He was a member of the Lay Advisory Board of Loyola University from 1950 to 1978, and he served as Chairman of the Board of Trustees of Clark College in Dubuque, Iowa. That school, too, was a beneficiary of his generosity.

Mr. Dooley's fame as a trial and appellate lawyer, will long prevail; and, although he will be remembered as a judge whose short tenure supplied masterful opinions, he has bequeathed the profession still another legacy. In 1977, shortly after he went on the bench, there was published "Modern Tort Law," by James A. Dooley, a three-volume treatise which spells out all tort law right up to the date of publication. Its table of contents prophesizes the legal trove within its 1,831 pages. His tracing of the development of tort law and his defining of Tort are examples of his clarity of thinking reduced to writing. His analysis of trespass, proximate cause, indemnity, family rights, pre-natal and post-natal injuries are some of the chapters of this all-inclusive tome. But it is his distinction between the responsibility of the judge and that of the jury that best portrays this clear-thinking man's philosophy. This dichotomy should be appreciated and accepted by all lawyers and judges. In "Modern Tort Law," Mr. Dooley says:

When one speaks of the function of the jury and that of the court, the applicable Latin maxim is, 'Ad questiones facti non respondent iudices; ad questiones legis non respondent iuratores' -judges do not answer questions of fact; juries do not answer questions of law

I predict that "Dooley on Modern Tort Law" will supplant "Prosser on Torts". It has already been cited in many opinions and as time goes on, it will become more authoritative and utilized as a valuable resource for trial lawyers, law professors, and judges.

No memorial to Justice James A. Dooley would be even superficial without a comment on his role as educator. Mr. Dooley was, indeed, a magnificent teacher. I say this from that of the locus of student. I was of that rank; I worked in his office, under him, in 1950, 1951 and 1952. He shared his tactical talents, his knowledge of substantive law and his benignly liberal views on justice and its administration with the younger lawyers in his office then and with many to follow. He was generous with his time and in sharing his awesome talents.

All trial lawyers of any tenure have a trial notebook. All trial lawyers protect that book as if it were the Holy Grail. Mr. Dooley's was a legal lexicon containing cases on evidence, procedure and the distinctions between judge and jury functions so necessary to the trial lawyer and so necessary to be quickly available to him. A copy of this condensed library was given to me early in my career with him. It is the basis for my own black, tattered, compact trial notebook which now approaches thirty years vintage. That gift alone would have made working for him more than worthwhile. It was, of course, not the only benefit. By osmosis, example, and direct tutelage James A. Dooley supplied those of us who worked with him with the basics for whatever skills we now enjoy. I know that whatever success or stature I have acquired I owe to my early training with James A. Dooley. Like so many others, he gave to me the opportunity that I needed as a young lawyer to sit at the feet of the master and to absorb, acquire, sift, collate and learn. My view and my gratitude toward James A. Dooley is not that of an isolated idolator, but that of one of many who have come in contact with him. James Dempsey of New York, William Frates of Florida, Bruce Walkup of California and Barnabas Sears of Illinois, all nationally known lawyers, who wrote the preface to "Modern Tort Law" express it this way:

Jim Dooley is a lawyer with that rare combination of trial as well as appellate court ability. While he is nationally known for his success in the trial courts, the decisions of reviewing courts attest to his appellate skills. They show him in the vanguard of the opposition to obsolete and archaic doctrines. A great exponent of common law principles, he has contributed more than his share to the growth of common law. We venture to say that no single lawyer has had a greater impact on the law of torts than Jim Dooley who has appeared in almost every conceivable type of civil action.

Curiosity prompted us to ask the publisher how the author was prevailed upon to undertake this work. The author agreed to the task because the undertaking provided an opportunity to do something for the profession which had been good to him. The work was written over several years, in whatever time he had between trials or briefs. It was accomplished only at great personal sacrifice, which is part of the makeup of every perfectionist.

James Dooley contributed much to the commonweal. He was a giant in our profession. His influence will long permeate the professional mores of his successors on the bench and in the practice.

DeTocqueville, in his "Democracy in America", countenanced lawyers like Mr. Dooley in our profession when he said:

The profession of the law is the only aristocratic element which can be amalgamated without violence with the natural elements of democracy I cannot believe that a republic could subsist if the influence of lawyers in public business did not increase in proportion to the power of the people.

James Aloysius Dooley was an aristocrat of the law. The entire legal community will long remember and benefit from his contributions to it and his leadership in it. He will endure for us all.