

Professor George Anastaplo:

A Remembrance

ANDREW MAJESKE



Figure 1: Professor George Anastaplo is pictured here in Davis California in May of 2004, in a typical posture, perusing the local newspaper. My nearly one-year old son Owen is in the foreground. This picture was taken by me in the rental home my wife and I lived in while we were in graduate school at UC Davis.

I must now fulfill a long-postponed duty to acknowledge my debt to Professor George Anastaplo and to eulogize him. I met him 40 years ago, on my first day at Loyola University of Chicago School of Law. He was nearly 60, and I was just 22. There was something austere and imposing about this most congenial of people. Professor Anastaplo was at once the most and least approachable figure I could imagine. Over the course of the three decades I knew him, I always addressed him as Professor Anastaplo, and he never suggested I do otherwise. But when my wife Andrea first met him during the visit in which the above photograph was taken, he insisted she call him George. Another reflection of this dual nature is apparent in his published writings. The main text of one of his fully annotated books or essays, while always polished and intricately constructed, could seem imposing, impersonal, and difficult to access. But upon reading the footnotes separately, a practice he recommended, the more engaging and animated part of his personality would leap forth from comments made at the very center of a long footnote, buried among extensive citations and cross references.

By chance his Constitutional Law Course was my first law school class. He opened the class with the aphorism, “The persistent questions are always more interesting and important than any of the answers posited for them from time to time.” This puzzled me mightily—the assertion struck me then as a kind of riddle, and a particularly troubling one because, up to that point, I held the conventional view that the answers were all that really mattered.

My academic success before that point was due to my knack for memorizing large amounts of material, together with an instinct for feeding back to professors what I intuited they wanted to hear. Within 5 minutes in Professor Anastaplo’s class, I knew from the radical and probing questions he was asking that I was going to have to change my ways. Something about the way he approached issues via fundamental questions ignited in me a desire to dig down to the roots of problems, and to examine and challenge the assumptions underlying the conventional opinions and positions I and my classmates held.

I realized in the middle of that first class that I had largely wasted my education up to that point; I knew I needed to take some action to fix this. But what? I struggled with this question as I walked up the stairs to visit Professor Anastaplo in his office hour after class. He listened patiently as I explained my predicament, and after considering for a moment, he recommended simply that I address my problem by enrolling in the night school at University of Chicago’s

Basic Program of Liberal Education for Adults. I later learned that the Basic Program was a non-degree, great-books based four-year curriculum designed and implemented by Robert Maynard Hutchins and Mortimer Adler in 1946 (a kissing-cousin of their St. John's College great-books curriculum).

Professor Anastaplo did not explain why he thought the Basic Program might be the answer to my predicament. Only later, after I had learned some details about Professor Anastaplo's career, did I begin to appreciate the personal experience behind his advice. Eventually I learned that he started his teaching career in the Basic Program in the mid 1950s in the midst of his bar-admission struggle, and he continued to teach there without interruption until shortly before his death in 2014.

I soon discovered from 2nd and 3rd year law students why Professor Anastaplo had not become a lawyer even though he graduated 1st in his class from the University of Chicago Law School in 1950. At this point, during the "red scare" and early in the "McCarthy" era, the Illinois Supreme Court's Committee on Character and Fitness personally interviewed all law students seeking to become lawyers. Among the questions they posed to weed out communists was: "do you believe in a right of revolution?" Professor Anastaplo, who had learned the sorts of questions being asked, was well-prepared for this one. He responded that Americans not only possessed a right of revolution, they were duty-bound under the *Declaration of Independence* to act upon this right in certain circumstances. His assurances that he did not consider the circumstances in the United States of 1950 warranted the exercise of this right failed to appease the Committee panel's shock and displeasure at being challenged in such a way, and they promptly declined his application to become a lawyer. Professor Anastaplo's ensuing battle with the Committee to become a lawyer would not culminate for another decade, when he lost his US Supreme Court Case, *In Re Anastaplo* 366 US 82 (1961), by a vote of 5-4.

Re-reading Justice Black's impassioned dissent in this case has long been a personal antidote for my disillusionment with one or another of the political crises experienced in the United States. Only once did it not suffice, in the days following September 11, 2001. On that occasion, after learning that President Bush's Press Secretary, Ari Fleischer, had declared "People should watch what they say," did I require the additional medicine of calling Professor Anastaplo and asking him whether he thought the alarm I felt was warranted. He responded that it was not time to worry...yet.

After meeting with Professor Anastaplo in his office hour, I took his advice; and after studying law and later practicing it during the day, I took Basic Program classes at night. This continued for the better part of a decade, as I continued taking “alumni” classes after finishing the initial four-year curriculum. While only a few of my Basic Program classes were taught by Professor Anastaplo, I took every course he offered at the Law School, and I frequently attended public lectures he gave around the Chicago area on a dizzying array of topics. I also had the good fortune to attend two of the week-long seminars he held for a number of years during the summer at The Clearing, an adult education and arts center located on the famed landscape architect Jens Jenson’s property in Door County Wisconsin.

One effect upon me of the unusual double-barreled education I received during my law-school years was a growing disinclination actually to practice law. I observed in the lawyers I met and worked with, and most of my other law professors, a progressive and stifling disengagement from the foundational questions that now animated me; the practice of law, I feared, would involve learning more and more about less and less—a kind of stifling hyper-specialization. Professor Anastaplo’s teaching and life example presented an attractive alternative, a radically interdisciplinary one, one I sensed would be far less lucrative than law practice but far more engaging and fulfilling.

Others more intimate than I with Professor Anastaplo, especially those who knew him when he was younger, have far more relevant and insightful things to say than I can possibly offer here. Many of their eulogies were published soon after his death and are readily available. Professor Anastaplo’s more than a dozen books, and hundreds of published articles, can masterfully speak for themselves. Consequently, I will simply relate a few personally significant interactions from my experiences with him that give a sense of what he meant to me, and what interacting with him could be like.

Late in my law school career I was required to submit three letters of reference from Illinois lawyers attesting to my good character and fitness to practice law. These letters were to be considered by the same Committee which had prevented Professor Anastaplo from becoming a lawyer. I decided to ask Professor Anastaplo to write one of my reference letters, hoping the Committee would challenge me on my submission of a letter from the non-lawyer law professor whose reputation they had tarnished, and whose career they had hijacked three decades earlier.

Professor Anastaplo bemusedly agreed to write the letter, but only after we had discussed my growing disinclination to become a lawyer. After considering for a few minutes, he agreed to write the letter on the condition that I agree to practice law for the amount of time I had trained to become a lawyer (three years); he explained simply that he considered this a good rule for anyone who had completed a sustained course of study towards a professional career. In retrospect, I am sure he was confident from long experience that if I practiced law for three years, I would probably practice for many more, and likely for my entire career. I didn't appreciate then the trick he was playing upon me.

By getting me to agree to his proposal, he had undermined the entire reason I had sought a recommendation letter from him in the first place. Even if the Committee rejected his letter as being from a non-lawyer, I would not be able to raise a stink about it as I initially intended. In order to keep my bargain with Professor Anastaplo, and dutifully become a lawyer, I would need compliantly to replace the letter he wrote with one from a lawyer, so that the Committee would approve my application. I realized that while Professor Anastaplo never became a lawyer himself, this did not prevent him from learning and employing some "lawyer tricks." I never saw the letter Professor Anastaplo wrote, and the Committee accepted it without comment; if they noticed anything, they chose not to take the bait. In any event, I believe my recommendation letter was Professor Anastaplo's final direct and official communication with the Committee.

After I had become a lawyer, while in a Basic Program class on Sophocles' *Oedipus Rex*, Professor Anastaplo posed a riddle. He first issued the following warning: "Do not trust anyone who can solve this riddle. But I am confident that all of you are trustworthy and will not be able to answer it." He then posed this riddle:

Assume you receive a letter in the mail [this was in the pre-internet era], asking you to invest money in a recommended company's stock. You are assured that if you do invest, this stock will at least double in price in just three months. You assume this to be some scam and toss the letter on a pile, but neglect to throw it away as you intended. Just over three months later you receive a second letter from the same person letting you know that if you had invested in the recommended stock according to the first letter from three months earlier, you would have more than doubled your money. You dig around, and miraculously find the initial letter from three months earlier and confirm that if you had in fact invested in this particular stock, you would have more than doubled your money. The letter also tells you that it is not too late, and if you invest now, you will still be able to double your money in three-months' time. You are intrigued, but continue to

believe that this must somehow be a scam; this time however you carefully file both letters somewhere you can be sure to find them later. You receive a third letter three months following the second, which informs you that if you had invested in the stock as initially asked in the first letter, you would by now have more than quadrupled your initial investment, which to your amazement you again confirm to be true. You are assured in this third letter that the stock will continue to gain value, and that in three more months it will double in price once again; you are therefore urged to invest your available cash to insure you reap the benefits of this sure-fire growth. The letter adds that this is your final opportunity, you will receive no more letters. You still have reservations about this being a scam, but the temptation to make a quick and seemingly certain profit proves too great, and you send this person your entire savings of \$5,000 to invest in the stock. You never see your money or hear from the letter writer again. How does the scam work?

The answer leapt to my mind almost immediately. I hesitated before proposing it aloud, mindful of Professor Anastaplo's ominous warning. Professor Anastaplo refrained from reminding my classmates of his earlier admonition, as he confirmed that I had correctly solved the riddle, though he did so while looking me over with an appraising eye. I never asked him whether he or any of his previous students had quickly solved the riddle of this particular scam, though I wish I had. I suspect one reason for his subsequent change in attitude about my leaving law practice to pursue a PhD was a consideration that any student of his who could readily solve such a riddle would be better suited to a position in academia, than constantly exposed to the temptations which might present themselves in legal practice.

In social settings Professor Anastaplo often seemed a Solomon-like figure, engaged in carefully weighing both sides of a fraught case which only he could justly decide. His mind seemed always to be working, and he seemed to retreat to this internal space much of the time. Yet I did see him fully present, and animatedly engaged with a few of his old friends from his time as a student at the University of Chicago, in particular with Larry Berns, David Grene, and Harry Jaffa. But in my experience these occasions were rare. I also had a few glimpses into the life of his family, especially his tender and playful relationship with his wife Sara Prince Anastaplo. But I can well understand the challenges faced by his children, such as are alluded to by his daughter Miriam Redleaf in her open letter about her father appearing in this issue. It must be very difficult to live up to the expectations of a parent who expects so much, possibly too much, of himself.

In closing, I wanted to mention that in 1986, just after he turned 60, Professor Anastaplo gave a special lecture to law students entitled “Lessons from Life.” Among the lessons he imparted was a suggestion that one should endeavor not to choose a career or to work at a job doing something one would not equally do without pay. This is indeed a high bar, but it seems to me that this lesson constituted Professor Anastaplo’s judgment on his own life, and his eventual realization that the Committee had inadvertently done him a great favor. He had lived a far more interesting and fulfilling life not practicing law. When I talk with lawyers I know, I sense that very few if any of them would practice law for free; I know this was the case for me. Having recently passed my own 60th birthday, and reflecting back on the twenty-five years since I left the practice of law, I realize that because of Professor Anastaplo’s influence, most of the work I have done I would have done even without pay. I remain deeply in his debt for the interesting and fulfilling life I have managed to live so far.

Works Cited

George Anastaplo, “Lessons From Life.” *The American Moralists: On Law, Ethics, and Government*. Ohio University Press, 1992. pp. 573-581.

George Anastaplo. “What is Still Wrong With George Anastaplo?” *DePaul University Law Review*, 35:3 (Spring 1986) pp. 551-647.

“In Memoriam: Professor George Anastaplo.” *Loyola University Chicago Law Journal* vol. 45, pp. 915-980 (various authors)

In Re Anastaplo, 366 U.S. 82 (1961). Justice Black’s Dissent begins on page 97 and ends on page 116.

Larry Arnhardt. “George Anastaplo, 1925-2014.” *Claremont Review of Books* XIV:3 (Summer 2014).

About the Author

Andrew Majeske is an NASJ editor, an Associate Professor at John Jay College of Criminal Justice (CUNY, New York), and an Adjunct Professor of Law at McGeorge School of Law (University of the Pacific, California). He is author of *Equity in English Renaissance Literature* (Routledge, 2006), as well as numerous articles ranging over a number of areas of interest. He is also an editor and contributor to *Justice Women and Power in English Renaissance Drama* (FDU Press, 2009).



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