

## **An Interview with Edward J. Cunningham Illinois Supreme Court Historic Preservation Commission**

Edward J. Cunningham, a graduate of the University of Chicago Law School, was in private practice in Chicago before becoming a trial attorney with the National Labor Relations Board. In 1965, he went into private practice with the firm Brown, Hay & Stephens in Springfield, Illinois.

**Interview Dates:**

April 14<sup>th</sup>, and November 10<sup>th</sup>, 2015; and January 21<sup>st</sup>, 2016

**Interview Location:**

Conference Room at Brown, Hay & Stephens in Springfield, Illinois

**Interview Format:**

Video

**Interviewer:**

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**Editing:**

Justin Law, and Mr. Cunningham

**Total pages:**

Interview One, 38; Interview Two, 54; Interview Three, 38

**Total time:**

Interview One, 01:50:00; Interview Two, 02:26:57; Interview Three, 02:00:48

## Abstract

### Edward J. Cunningham

#### Biographical:

Edward J. Cunningham was born in Chicago, Illinois on October 30, 1933, and spent his early life in Chicago and rural Barrington, Illinois a distant suburb of Chicago. After graduating from the Hotchkiss School in Lakeville, Connecticut in 1953 he attended and graduated from Yale University in 1957 with a degree in History. Cunningham attended and received a law degree from the University of Chicago School of Law in 1960, and was admitted to the bar that same year. Cunningham was engaged in the private practice of law in Chicago with the firm of Dallstream & Schiff before becoming a trial attorney with the National Labor Relations Board in Chicago in 1963. In 1965, he joined the firm of Brown, Hay & Stephens in Springfield, Illinois. Cunningham and his wife Caroline have four children.

#### Topics Covered:

Parents and family history; growing up in Barrington, Illinois; early education; Ashville School in North Carolina; WWII and living in Brazil; Hotchkiss School in Lakeville, Connecticut; Cold War; Mayor Richard J. Daley; attending Yale University; longshoremen and organized crime; working as a lumberjack in Coos Bay, Oregon; early jobs; travels in Europe; conception of his generation; the draft; Kennedy assassination; University of Chicago Law School; Chicago; election of 1960 and political and social views as a young man; Hague Academy of International Law; private practice in Chicago; work with N.L.R.B.; Springfield; nature of the local bar; prominent lawyers and memories of magistrates; courthouses; pipeline case; pork belly case; *Wiseman v. Law Research Inc.*; Fourth District Appellate Court; clerking for Justice Sam Smith; *Western Union v. Illinois Commerce Commission*; *Thurston v. Board of Elections*; *Janssen v. City of Springfield*; memories of judges; Paul Powell; early years of soccer in Springfield; civic engagement; *Dugan Oil Company v. C.O.A.L.*; labor cases; labor injunctions; union representation case; Brown, Hay & Stephens; court appointed attorney work; Vietnam war; Richard Nixon and Watergate; *Glasgow Electric Company v. Department of Revenue*; work and family; hospital cases; *Lapidot v. Memorial Medical Center*; *Gallina v. Watson*; Illinois Hospital Attorneys Association; *Scheller v. Health Care Service Corporation*; *Demeter Inc. v. Werries*; Wal-Mart cases; airplane crash in Quincy cases; change in legal work over time; change in the local bar over time; changes in litigation; George Wallace; cameras in the courtroom; the judiciary and the media; bar associations; role of courts and lawyers in society; politics of the judiciary; pro bono work; preserving legal history; writing; Winger murder case; Cuba; future of the profession; teaching health law at U.I.S.; and legacy.

#### Note:

Readers of this oral history should note that this is a transcript of the spoken word, and that it has been edited for clarity and elaboration. The interviewer, interviewee, and editors attempted to preserve the informal, conversational style that is inherent in such historical sources while also editing for clarity and elaboration. The Illinois Supreme Court Historic Preservation Commission is not responsible for the factual accuracy of the oral history, nor for the views expressed therein.

## Edward J. Cunningham: An Oral History

LAW: This is an oral history interview with Edward J. Cunningham. Today's date is April the 14<sup>th</sup>, 2015. We're in Mr. Cunningham's law offices here in Springfield, Illinois, and this is interview number one and today we're going to focus on his background. Mr. Cunningham, I thought we would start with when and where were you born?

CUNNINGHAM: I was born actually in Chicago, [Illinois], on October 30<sup>th</sup>, 1933.

LAW: Tell me a little bit about your family history, your family background.

CUNNINGHAM: My dad, James Cunningham, was, worked under a man called Sam Insull who in the 1920s and [19] 30's started a utility empire and he subsequently, not my dad but Sam Insull, was indicted for all sorts of activities, mainly for violations of the Sherman Anti-Trust laws. And my dad was, at least to the best of my knowledge was a secretary, not what we think of as a secretary taking notes but an administrative post. And when all this hit the fan he helped fill the vacuum because a lot of the top administrators got removed. Sam Insull ended up in Greece, poverty, he was indicted, etcetera. But my dad became Vice President of People's Gas in Chicago, one of these utility companies. My mom was a graduate of University of Wisconsin with a major in finance. They were born about 1901. My dad was one of seven children, his father died when he was eight or nine; his mom emotionally broke down and so he was basically raised by one of his older sisters. And then he, I don't know quite how he did this but he worked his way through high school and came to Chicago and became an employee of

People's Gas and then when Insull was indicted he became Vice President of Finance of People's Gas.

LAW: So he originally wasn't from Chicago?

CUNNINGHAM: No, he was born in Savannah, Georgia. His dad worked on a railroad as a – I don't know what his position was but not on the trains themselves but on some sort of administrative position. And as I said he was one of seven children and the family stuck together, somehow he ended up in Chicago. My dad did not have a college degree but had attended various courses over the course of his career. I had an older sister, a year and a half older, and she was quite attractive. The early years we went to a school called The Latin School but I don't remember anything about that. Then in the early 1940s or late 1930s, father and mother had been, going out to Barrington which was a commuting suburb up by Chicago. In fact at that time was the last line of the Chicago & North Western [Railroad]. And he, then later, decided he wanted to live out there after he rented a couple places and we built a house, the late 1930s/1940s, five miles out of town on a dirt road, twenty-five acres, and he commuted daily into Chicago. My mom was a stay-at-home mom. Then during WWII came along he somehow, again I don't know the details of this, he became involved with the U.S. Rubber Corporation which is a corporation I think owned by or run by the U.S. Navy Department and they asked him if he would go down to South America and look for rubber.

LAW: Interesting.

CUNNINGHAM: So in the early 1940s my sister, my mother and I went down and lived in Rio de Janeiro, [Brazil], for about a year. He was in the Amazon basin looking for rubber

trees. That's when I start having some memories. I remember living in a, basically in a hotel with my mom and sister; not seeing my dad. We attended a school and apparently became fluent in Portuguese and it was a school where Americans attended in Rio. And I remember swimming the Copacabana or the bay there in Rio, but that's about all I remember about that. I guess then the next period of time that I remember is that we came back to Barrington, [Illinois], and father/mother became very socially active. From Barrington we'd go on to dances in Chicago and I was sort of the one out of step with everyone because everyone else knew people from Lake Forest, [Illinois], where they're all from but I was from five miles out of Barrington, so I would sit in the corner and watch all these fancy girls dance and that sort of shaped my awkwardness. My sister being very attractive didn't have any trouble with these "dances." The guys swarmed around her but, my parents led a very socially active life, I did not fit into that lifestyle. I went to Country Side School and it was outside of Barrington the town. There were about twenty classmates in my grade, from first through seventh grade, so it was a very small school and my dad didn't think I was getting a good enough education, probably wasn't. In the seventh grade I went to Asheville, North Carolina, for the Asheville School which was a boy's school, seventh and eighth grade and high school and spent two years there in Asheville, North Carolina. And it was a boarding school, I remember we had a master on every floor who made sure that you were behaving and he would inspect your rooms on a daily basis. He was an ex-Army something or other because, you had to make your beds, but then he would bounce a quarter off the sheets, if it didn't bounce he had you do it again. He wore white gloves and would sweep them under the bed and make sure you had cleaned your floor (chuckles). So it was almost a militaristic

school at that level. But anyway there were about twelve people in my grade, maybe a few more. We had mandatory sports every afternoon, school obviously, study hall. Life was pretty much, you're pretty much regimented, you got up in the morning, go eat breakfast at the cafeteria, at a table where the master would sit with you, then you would go to either study hall or your classes until noon or 1:30 [p.m.] and then at 2:30 you'd have athletics until 5:00, 5:30 on you'd have study hall until 6:30 and from 7:30 on you had study hall until 9:30 and lights were out at 10:00, so it was not a very flexible schedule.

LAW: Right.

CUNNINGHAM: It was a good environment for building your direction in life. At Asheville I played soccer in the seventh and eighth grade, was the captain of the team. You developed rapport with various teachers because you had very small classes. They'd take you camping on the weekends in the Berkshires. I remember getting on the airplane by myself, flying down to Asheville, being picked up then shuttled off to the school. On Saturdays they let you have the afternoon off and you could go into the town if you wanted to. Saturday nights were spent watching movies there. Sunday was chapel service and pretty much homework and that type of thing, so that was over two years.

Meantime my sister went off to a school called Dobbs Ferry in New York for four years. My parents had a third child, Michael/Mike, he's eleven years younger than I am so it would have been in about [19] '44/[19] '45 and he attended high school in Barrington and developed a core of friends and all that. My relationships with people in Barrington consisted of the, seventh and eighth grade, people that I'd been in the early grades with. Since we lived five miles out of town we didn't have a lot of social

activities. At that time my dad bought me a Cushman Motor Scooter so we could get around and do our own thing. Other kids had motor scooters or motor bikes and that's how we got around. We lived west of Barrington and then you'd turn, I think it was, north on a dirt road half a mile up there. Our nearest neighbor was probably, across the road, was a farmhouse but other than that our nearest social neighbor was probably two or three miles; it was very isolated. So that was my seventh and eighth grade history.

LAW: Just to get some names, your dad, his name was James?

CUNNINGHAM: James A. Cunningham.

LAW: And your mother's name was Elizabeth?

CUNNINGHAM: Elizabeth B. Cunningham. Berkeley was her maiden name and she grew up in Baraboo, Wisconsin, and had one sister.

LAW: And your sister, what was her name?

CUNNINGHAM: My mom's sister?

LAW: No, your sister.

CUNNINGHAM: My sister, Cynthia, Connie; my younger brother was Mike.

LAW: Do you have any memories of the Depression or WWII?

[00:15]

CUNNINGHAM: I have the memories of going down to Rio and I have the memories of digging fox holes in our yard. And then when some friends would come over we'd have dirt clogs and throw them at each other from the fox holes and tell them that they were

grenades. But other than going down to Brazil, I don't recall anything special. I remember going down to Rio that we stopped off in Panama and saw the military base. I remember flying over the Andes [Mountains] and in a non-pressurized airplane, you had to suck on a little tube which would give you the oxygen. I remember there was some lady with a big ring on her hand and I went up to her and said, "You must be rich," and my mother balled me out for being so inquisitive. I also remember getting an ear ache because of the non-pressurized cabins and the captain coming back and talking to me. So WWII was, other than in the history books which later became a fascination for me, I have no actual recollection. Dad was not in the service but he was with the rubber corporation. When we came back from South America – they have tribes out there called headhunters, Jivaro Indians, and at that point if someone killed someone in your tribe I would have to kill, no, you would have to kill someone in my tribe or their soul couldn't rest. And he came back with, we had a shrunken head, I used to chase people with a shrunken head. And we also had, they brought back a blowgun, it was as I remember a pretty long blowgun about seven or eight feet and according to my dad the Indians could shoot monkeys out of the trees with that. They poisoned the darts with curare which is now used in hospitals as an anesthetic. Anyway, that was what I remember about WWII, that's my adventures there.

LAW: Now where did you go to school after Asheville?

CUNNINGHAM: Then my parents thought I should go to a different school although I was doing well in Asheville, they wanted me to go to – I guess they had long term plans for college different from going to southern schools, so I went to Hotchkiss School in Lakeville, Connecticut; it is an all boys' school again; four years of high school. They

had about a hundred, hundred and twenty people per class, maybe five hundred people over all. Slept in dormitories, study halls, regimented classes, eat at the tables with headmasters or masters, sometimes the Headmaster, who always intimidated us. We had to work in the kitchen, rotating, sometimes serving, not in the kitchen cooking but serving the food to the tables. It was a fairly prestigious school. My classmates were, again this probably what I enjoyed the most, they were a pretty good group. It was a little bit outside of Lakeville, [Connecticut], which was a very small community on a lake. I went to summer school to get acclimatized to this before going there and became a class officer and did well in school. Had a couple professors that I got along with or teachers that I got along with pretty well. The Headmaster was a man called George Van Santvoord [Headmaster 1926-1956] and he was on the Board of Trustees of Yale University. He was a very positive force in the school. And primarily the graduates of Hotchkiss went to the eastern colleges, from Harvard [University] to Yale, Dartmouth [College]; Ivy League crowd. But I remember the setting was out sort of near woods near a forest. And there was a guy called Wallace who was a classmate and he would go out on Saturday night and drink beers in the woods nearby. I think he finally got caught. But the juvenile delinquents of that era were ones that would sneak an occasional beer on the weekend.

LAW: Okay.

CUNNINGHAM: Then, while on the student council I suggested, “Maybe we should have a co-ed dance,” the Headmaster bought into that. We had a dance with a school called Ethel Walker. It was sort of an awkward time for guys that had been in boys’ schools all their lives. The girls were in one corner, the guys were in one corner and the brave ones

would go over and ask 'em to dance. So it was again sort of a rarified, unrealistic atmosphere that you were growing up in. Anyway, the first year I was President of the class, played soccer, did well in my school. Second year was about the same, student council, then third year was the same, fourth year I was captain of a soccer team. I think I was the permanent Vice President or Secretary of the class.

LAW: Mr. Cunningham do you want me to get you some water?

CUNNINGHAM: The classmates we had there were, again, out of my league. Wallace of Wallace Pencils which was the yellow pencils that were predominant at that time. Phillip Pillsbury was a member. There was a guy called Faver Tan who was a Mongolian and was the tallest one in the class, about six (foot) two, or something like that. Charles Gulden, Gulden Mustard. And a number of other kids like that. I guess it was a growing up period for all of us and again it was one where you couldn't get in trouble if you tried because you were isolated from the cities and all sorts of problems. Somehow we got some beers and snuck them in the woods but that was about it. Most of the professors, professors is the wrong word, teachers, instructors had either Master's [degree] or some of them had PhD's. In the dormitories they had a master assigned to each floor, living on each floor with a combination for him and his wife and children. It was all boys, it's now co-ed. I don't know how pricey it is but I'm sure it's real pricey right now. It's a good school, we got a good education. We had some of the classic educations like Greek and Latin and upon graduation most people went on to the eastern colleges.

LAW: When did you graduate?

CUNNINGHAM: Hotchkiss, Oh, 1953.

LAW: Do you have any memories of the early Korean War or the early Cold War?

CUNNINGHAM: I remember, I think it was the Korean War but not – you know these are all from remote, not personally connected with it. My dad didn't serve in the service. I remember the Korean War, well let me back up, I remember the communist sort of takeover of Eastern Europe. I remember the first year of college I wanted to join the service to fight, or fight, to go over and be in the Army. I remember Hungary was the one country that came to mind because there was a lot of news about the violence that was in the taking over Hungary. In 1952 or, I think it was, or [19] '54 my dad, well, after the rubber corporation he became Vice President of Finance of the Container Corporation of America which is in Chicago. Then he left that job and he became Vice President of Finance of the University of Chicago, all the time we were still living in Barrington. And at that time there was a man called [Robert Maynard] Hutchins who was the Chancellor [1945-1951] and he was very progressive and had seventeen/eighteen year olds graduating from college. He had high school students that were, well I forgot the word, but went directly from freshman in high school to college, several courses, depending on their academic scores on tests. My dad worked there as Vice President of Finance for a while and then quit and became an investment banker and he was a friend of [Chicago Mayor Richard J.] Daley's, somehow he became a friend of Daley's. He underwrote the bonds for the first O'Hare [International Airport] expansion,

[00:30]

and the Illinois Toll Roads. Then he died unexpectedly in about 1961/1962 but before that he was always in finance and as to my recollection I remember going into Chicago and having lunch with him and he was also head of the Railway Consolidation

Commission in Chicago and some lawyer from Kirkland & Ellis [LLP] came up to him and said, “What have you got up your sleeves for us now!” He was a lawyer for [Chicago and] North Western Railroad or one of the railroads and he was just giving my dad a hard time about this consolidation issue. But anyway I was in school and in that break between his jobs he took a summer off and my sister and I, mother and Mike went to Europe for a summer and I think this was right before college and we traveled around Europe in a Buick car. That’s where I got interested in this situation involving the European countries; how vehement, how violent these things were. So anyway I don’t have any recollection about the Korean War or Vietnam War other than reading about them in the paper and that type of stuff.

LAW: I see. Now you said your dad came to know Mayor Daley. Were you from a Democratic family?

CUNNINGHAM: No, he was obviously Democrat, he supported Mayor Daley but I don’t quite know how that all came about quite frankly. He was part of Adlai Stevenson’s [II] non-partisan committee for when he ran, I don’t know if it was for Governor, but when he ran, but anyway he’s connected to Adlai Stevenson. But we were in France and Adlai Stevenson, we stayed at a hotel which was out on the Mediterranean [Sea] and Adlai Stevenson stayed there with his kids and I remember seeing him and meeting him there. And I also remember there was a Senator Benton that was there, I think he was probably a local Illinois Senator and he wanted me to date his daughters but I had to go pick up my brother at the airport because he had been at a camp and he got real mad at me, but anyway that’s sort of a sidelight.

LAW: So why did you decide to go to Yale University and what did you study there?

CUNNINGHAM: Well I floundered around a little bit, first year I had three roommates and two of them flunked out or dropped out, the first year. We had a room, or, you had two bedrooms, double-decker beds and a little sort of room in between. It wasn't very conducive to studying; it was a little bit of a cramped space. The first couple of years you sort of flounder around and try to figure out what you like and I ended up majoring in history, European and American History, and getting a degree in that. English was one of my better subjects. French was also a subject I liked. Last year I remember taking a course from a professor who was writing what amounts to a treatise, eighteen volumes of the history of the world.

LAW: Wow.

CUNNINGHAM: I don't know if he ever finished it but I remember this was senior year and I remember he said that, "The only requirements for this course are that you attend and listen to me and that you write a paper," so we said, "What of?" He said, "Any subject you want." So there's a movie called *On the Waterfront* that had just come out, with Marlon Brando.

LAW: Right.

CUNNINGHAM: I said, "Well I'd like to write a paper on crime, on the waterfront in New York City." So this was sort of fun and he said, "Okay," so I set up an interview with Father [John M.] Corridan who was with the – and went down to New York and interviewed some of the longshoremen, interviewed some of the characters Father Corridan put me in contact with. I don't think I ever interviewed any of the mafia, they probably wouldn't have talked to me anyway.

LAW: (Chuckles) Okay.

CUNNINGHAM: But then I wrote the paper and it was fun, it was sort of a current events newspaper type of approach.

LAW: What was your impression of the longshoremen, were they like they were in the movie?

CUNNINGHAM: They weren't exactly – I worked afterwards, had connections with longshoremen, connections is the wrong word, I worked with the National Labor Relations Board so, yeah, I don't know I think the movie perhaps exaggerated but it was not a crime-free type of involvement. It was from getting jobs to getting contraband or things passing in. In the interim, and later on while in college I worked as a lumberjack in Coos Bay, Oregon.

LAW: Interesting.

CUNNINGHAM: And that was a lot of fun, hard work. A friend and I, drove out there and I think it was after the first year or maybe the second year and we got jobs at Weyerhaeuser, lived in a rooming house with a bunch of other individuals who worked there and a lady had a sixteen year old daughter who had been engaged twice, because young ladies were in scarce supply in Coos Bay, Oregon. At that time it was a lumber, now it's sort of a yuppie, beer, home brewed beer, touristy town. But I remember getting up at 2:30 in the morning to take a two hour bus ride into the woods, the forest, and seeing the mist rise off the mountains and seeing the elk as they were going down the roads. Then you'd get off the bus and walk down the mountains, or climb down the mountains. My job was what they called a "choker" which was wrapping a cable around

trees that had been sawed down then they pull them up and you dodged debris as they're pulling up the mountain to put on the trucks; so it was an interesting environment.

LAW: Was this one of your first jobs?

CUNNINGHAM: The first job I had, actually, was for a ticket agent at United Airlines at O'Hare. The real first job I had – at Barrington we had twenty-five acres and my job out in Barrington was to cut the lawn and half of it was a lawn, so I would spend probably, I'd spend at least two to three days a week cutting the lawn.

LAW: Hours. Goodness.

CUNNINGHAM: Then I'd be shooting golfers as they popped out, with my .22 [Long Rifle]. Again it was sort of an isolated existence. And the second job I had that I remember was working out on a fish farm in Dundee, [Illinois], at the Milk Pail [Restaurant and Entertainment Complex] and they raised trout and it wasn't for the residents but it was for the dudes in Chicago that liked to think of themselves as a great white hunters and they'd come out with their V.L. & A. outfit on, their fly rods, and fish these captured trout in these cold water ponds. And I guess it was what you'd call a fishing club of some sort. My job was to keep the ponds up, to cut the grass around the ponds. To generally do the work around and help the guys that were fishing it. If you really liked someone and he would tip you and they weren't having any luck you fed the trout horsemeat. So you would get the horsemeat and if the guy looked like he was having a rough time or was with a cute girl you would get the horsemeat on there and the fish would come up and grab it and you would hook 'em; but anyway that was sort of a fun job. Then I remember the second job was United Airlines ticket counter and the one thing I remember about

that is that was some guy was coming from Chicago and somehow his bags ended up in Seattle, [Washington], and he just kept screaming at me, “I want my bags now, I want my bags now,” I said, “I can’t do it,” and he was a little irrational so I put the sign CLOSED up in front of the counter and the boss came over and said, “You don’t treat customers that way,” so it was sort of funny.

LAW: Now what about when you’re in college?

CUNNINGHAM: I had a couple summers, I’m trying to think of when it was – one of these jobs was when I was in college, that timber, and one of them was travelling with my parents in Europe. Then another time I just went over and hitchhiked throughout Europe. I got a knapsack, two or three changes of clothes and at that time you took a boat and you had the storage class so it was really pretty cheap. You’d go over to Europe and you’d stay at youth hostels. I remember one youth hostel in Copenhagen, it was ninety cents a night, if you wanted breakfast, if you didn’t want breakfast it was forty-five cents but it was situated next to the Tuborg Brewery so after getting breakfast you go over and take a tour of the Tuborg Brewery and get cheese and beer for your lunch, so that was sort of fun. Then I hitchhiked into Holland, I hitchhiked into Norway, met friends along the way, hitchhiked down to Spain, Italy, sort of an adventuresome – but I don’t think you can do it now because you stand out on the road and put out your thumb and people stop and pick you up, now it’s very questionable as to if you can do that; it’s a different era. I remember hitchhiking into Berlin, [Germany], too, it’s, they didn’t have the wall up at that time, before the wall got put up. And I got a ride with a truck driver but he said, “You’ll have to hide because we go through this zone, the Russian zone,” and so I hid, he took me into Berlin and I stayed in the American part in a youth hostel

[00:45]

and met a guy from – I don't know if he was from East Berlin or not, but he and I would take a subway over to East Berlin over to a place called Stalin Alley and see the Russian soldiers and all that sort of stuff. Probably, if we got caught you'd never hear from us again, but we made it back. Then I decided to not to be stupid and try to hitchhike out so I took an airplane out. So, you know it was an adventure, a good adventure.

LAW: What do you think that you learned from travelling around Europe?

CUNNINGHAM: You learned that we're lucky to be in this country to begin with.

LAW: Okay.

CUNNINGHAM: Secondly you learn that these other people, other countries, have the same problems that we do in many ways.

LAW: Okay.

CUNNINGHAM: That the kids/people at the youth hostels, which were sort of, where you got together, talked with people about – had the same problems and that, that they were not as well-to-do obviously as most of us, or as many of us in the U.S. were. That they had experiences during WWII which were very difficult to live with. And you learned a lot of tolerance and you learned about other people, other cultures. And you know one thing about it too was hitchhiking I never felt insecure, I never felt that there was any real danger and that was quite a group that was hitchhiking at that time.

LAW: Did you have a conception of being part of a particular generation? Like did you see yourself as being part of the so called "Silent Generation"?

CUNNINGHAM: Yeah I guess I probably would. I saw myself as being pretty silent, pretty awkward, pretty isolated.

LAW: You've said that word a few times, isolated, what do you mean exactly?

CUNNINGHAM: I think the growing up period where you're five miles from town going to a little grade school with twenty people and they were scattered within a five mile radius and then going to, I think coming back to, that environment where you had been away at school most of your life; that you weren't really having contact with the people in your home.

LAW: Okay, I understand. What about more broadly I guess, did you think that your generation was different from your parent's generation?

CUNNINGHAM: Yep, quite a bit.

LAW: In what ways?

CUNNINGHAM: Parents went through the [Great] Depression and they had some rough times I'm sure but they were also growing up during the period of prosperity after WWII.

LAW: So they kind of saw both sides.

CUNNINGHAM: Yes, and I remember one of my parent's friends, a Mrs. Horn, was in Chicago during the [19] 30s and had a bookstore and she would, so they said, she would have a Sunday dinner for the homeless in her bookstore. I think my parents grew up thinking or wanting to having more materialistic goals than I ever did, well, and social goals, and I think that was a product of sort of growing up in this rough Depression Era. As I said my father had six brothers and sisters, he was seventh. He started working at

nine or ten years of age when his dad died. So I think they were – he lived through some real rough times and I'm sure my mom did too although I didn't know quite as much about it.

LAW: How would you describe your generation's views?

CUNNINGHAM: Lucky. I was too young to serve in WWII, in college in the Korean War, too old (chuckling) for the Vietnam War. In some ways it was lucky, some ways it wasn't because you would have matured a lot better if you had actually been in the service in these wars.

LAW: Now they had a draft at that time.

CUNNINGHAM: Yes.

LAW: Any memories of the draft and what were your thoughts about the draft?

CUNNINGHAM: Well I remember going to the draft board after I got out of high school and this was in McHenry County, [Illinois], which was in – Woodstock was the county seat. Barrington was, where we lived was right in the corner, Barrington was in I think Cook County or Lake County, and talking to them and saying I'd like to finish or get my college out of the way before I did this; went into the service. And then they gave me a college deferment. Then after college I went into law school and I can't quite remember what the circumstances were there but the Korean War wasn't around, it had been resolved, there was no more active fighting; there was obviously no peace treaty. The Vietnam War had not started up yet and then when I got out of law school nobody wanted me, I was too old.

LAW: Do you have any memories of the Cuban Missile Crisis or the [U.S. President John Fitzgerald] Kennedy assassination?

CUNNINGHAM: Yeah, I remember working, I had started off in Chicago working for a major law firm. I was not happy, I was single. They had a little table for dinner where they supplied us dinner every night at a little restaurant, then you'd go back to the office and do your work on Saturdays and sometimes you'd work on Sundays. So, after two years I was a little burned out. Can you imagine being burned out on your career after two years? So I switched and went to the National Labor Relations Board. It was more of a forty-fifty hour week rather than a full-time, every day type of thing on Saturday and Sunday. I remember Kennedy's assassination there because I was there, I was working in the office. A little black gal came in, Sharon was her name, I can't remember anyone else, came in with tears in her eyes and said, "They just shot Kennedy," and she was in tears.

LAW: Where were you working at?

CUNNINGHAM: The National Labor Relations Board in Chicago.

LAW: In Chicago.

CUNNINGHAM: Yes. And you remember going through the riots of the [1968] Chicago [Democratic] Convention, I remember seeing that. I don't remember anything about – I remember [Dr.] Martin Luther King's assassination, Bobby Kennedy's assassination. I remember the Cuban Missile Crisis and how close we were to a Third World War or nuclear war; watching it closely; it was a troubled period at that time. I remember race riots in Chicago. I remember at that time I was working for the NLRB and they wanted

me to investigate an unfair labor practice with a steel worker and going down to sort of the black neighborhoods and slum areas to interview this guy, he was about six (foot) five, must have weighed two hundred and fifty pounds, knocked on his door and he sort of aggressively said, "What do you want whitey?" And I showed him my credentials and said, "I'd like to interview you on this job discrimination claim," and then he became very friendly and said, "Come on in," he picked up this overstuffed chair with one hand, put it down on the floor and said, "Sit," and I did and he told me, you know, then we investigated the claim. At that time I recall buses going through with people hanging out the side of them chanting and that type of thing. And the Chicago Convention riot I remember very vividly. That was, I forgot the name, it was [U.S. President Lyndon Baines] Johnson<sup>1</sup> obviously but there was, I forgot the people that were running but I remember having the tents and the people out in the parks and the National Guard being called and [Mayor Richard J.] Daley being very proud that no one got killed; but I remember seeing the police club demonstrators. I remember one gal in our car saying, "I want to get out of here," and the National Guard guy in front of her pointing his rifle at her saying, "Don't move," I remember the one on the side of her saying, "Move out of here," pointing a gun at here; so it was a chaotic time. It was something to live through; it was fun to watch in hindsight but not to be in, in hindsight.

LAW: So, I want to come back to these events a little bit later on but I want to ask why did you decide to study law?

CUNNINGHAM: Well I got out of Yale and I didn't know what the heck to do. I had a B.A. in History and a couple/three job opportunities, one of them I'm sort of sorry I didn't

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<sup>1</sup> Hubert Humphrey.

take. One was with the *Chicago Tribune* as a cub reporter, which would have been fun except the pay was something like fifty bucks a week. The other one was with a Foreign Service and the third one was going into the OCS in the Navy and talking to my parents, my father, they thought law school would be a good opportunity/good option, better than those, although I think a newspaper reporter would be fun. We had friends who were newspaper reporters and they seemed to be having adventures on Mars.

LAW: So why the University of Chicago [Law School]?

CUNNINGHAM: Because I was from Chicago and I had applied at Northwestern [University] and University of Chicago. I was accepted at both. There was a Dean at the law school at that time that also knew my father.

LAW: Edward [H.] Levi?

CUNNINGHAM: Oh, you know him.

LAW: Know of him, yes.

CUNNINGHAM: So, yeah I couldn't decide between Northwestern which had more of a social life or the University of Chicago out in Hyde Park. So I went into Dean Levi's office,

[01:00]

and I asked, "You know I'm having this hard time deciding between Northwestern and the University of Chicago," and he looked a little bit astounded that I would ask him which one I should go to and he said, "You know I don't wanna knock Northwestern," these are actually his very words, "but it's a good little local law school but it's not like

our international one,” but he was a little bit offended that I was trying to compare the two. But anyway he was the guy that taught anti-trust and patents at the University of Chicago and he ate sawdust for breakfast, he had a very dry sense of humor, very, very bright. Anyway, he said, “You should go here,” so that’s where I ended up.

LAW: So what are your memories of life in Chicago in the late [19] ‘50s? Where did you live when you were in law school?

CUNNINGHAM: We lived in a dormitory across the first year. And the freshman classes, I recall – I played soccer there too for the first year but then I got kicked off the team because we had law school exams the day of the big tournament and I felt my exams were more important than the tournament but the coach didn’t, but anyway (chuckling) so that ended my soccer career until I got down here. We had a professor Karl Llewellyn who taught Elements of the Law and he came from Columbia [University], he might have come from Harvard [Law School] too. And he was an older man but brilliant professor and he would, these are all freshman now, he’d call on you and his famous phrase was, “Up on your hinders,” he made you stand up to recite. And he would get very animated, let’s say, in his question and we were all somewhat intimidated by him. So one day he got so animated he lost his false teeth and after that we kept trying to get him animated to lose his false teeth again, it was sort of funny. He really gave you a good background. Then we had a guy called Francis [A.] Allen who ended up being the Dean of the University of Michigan Law School later, he taught Criminal and Constitutional Law. But this was a freshman class and again you’d have to recite the facts of the cases and then the analyses of the court. We had one real sort of difficult sexual assault case. We had one woman in the class and who did he call on to recite the case and I remember

being extremely embarrassed for her. But she was an older lady, probably in her, close to thirty, she had come from Germany and she handled it real well. Then he had on his exams a villain who did all these nefarious things from shooting people to robbing stores to that. And this villain was always Sicnarf Nella which was Francis Allen spelled backwards, so I think he was living his Walter Mitty dreams in all this. Then we had a lady Soia Mentschikoff who was the Recorder for the commercial code. She was married to Karl Llewellyn and they both were extremely bright people and that was the first year and it was an experience. We started with one hundred and sixty-five in the class, I think we ended up graduating with somewhere around one hundred and two or one hundred and three.

LAW: What was the makeup of your class as far as gender and race and ethnicity?

CUNNINGHAM: We had a couple blacks, that was all, and we had a couple women, three women. I think this one that I talked about with a criminal case went on and graduated early. So maybe it was four women but only one made it through law school. Now it's about fifty-fifty or a little bit more women.

LAW: What strands of legal philosophy were you encountering at the University of Chicago?

CUNNINGHAM: Well I'd say that, I don't know if this answers the question, the professors were generally conservative from the point of view of, not quite the liberal reputation the University of Chicago has. They were probably that and the business schools were probably some of the most conservative schools there. Dean Levi, as you probably know, became Chancellor of the University of Chicago and went on to become Attorney General after [U.S. Attorney General John N.] Mitchell got canned, indicted, under [U.S.

President Richard Milhous] Nixon. Then he was asked to be in the [U.S.] Supreme Court and declined. But the general makeup of the faculty was people who were extremely brilliant, from Rhodes Scholars to PhD's, Master's [degrees], clerks of the U.S. Supreme Court, were very brilliant people. A lot of the professors and a lot of those students were Jewish and I was asking one of the professors why that was and they said because it was a tradition of analytical thought in the Jewish community, which I thought was interesting. And the school was basically analyzing cases and learning to think, if I could use that term, from the point of view once you got out of law school you didn't know diddle at all about practicing law but your analytical powers, you spent three years using them, trying to be objective. One of the professors that I had called Meltzer, Bernie [Bernard D.] Meltzer, was one of the trial attorneys for the Nuremberg Trials and we had the full transcripts from the Nuremberg Trials in the library which was fascinating.

LAW: But did you encounter legal reasoning or legal realism or formalism?

CUNNINGHAM: Legal reasoning is, yeah, the structured reasoning/logic of the courts, logic of going from one statement to another. Other things you'd learn is to speak up because they'd make you stand up and recite, whereas in college, I remember an English course I got an A in it and he said, "How the hell," he didn't say it quite like that, he said, "How did you get that?" I said, "Well I worked hard," "Well I've never heard you talk," I said, "Well, you know, I'm not very outgoing." One of the professors I had we, called Sheldon Tefft was a Rhodes Scholar and he also was a friend of my father's in some ways. I'd go to this course called trusts and I'd come in the class, the first person he'd call on was always me and finally I went up to him and said, "What the heck are you doing calling on me all the time?" And he said, "You're too quiet, as a lawyer you have

to be able to speak up and not be afraid,” some of these guys would just stick up their hands at every opportunity. Anyway I remember that and I said, “Hey, quite pickin’ on me,” and he finally did.

LAW: Do you remember something called the Jury Project?

CUNNINGHAM: Harry Kalven, [Jr.] I think had the Jury Project but I don’t think I participated in that. I remember him writing a book on it and getting/reading the book [*The American Jury*]. He taught torts. Did you go there?

LAW: No.

CUNNINGHAM: I just was wondering because you seem to know.

LAW: What about the Bigelow Program?

CUNNINGHAM: Don’t know anything about that one.

LAW: Also there was a dedication of the new law building while you were in college.

CUNNINGHAM: Yes.

LAW: Do you recall that?

CUNNINGHAM: Vaguely.

LAW: Did you attend and hear any of the speeches?

CUNNINGHAM: I don’t recall the speaker but I’m sure I attended.

LAW: Ok, I wanted to ask you also if you remembered a professor by the name of Malcom [P.] Sharp?

CUNNINGHAM: Oh yeah, Contracts, first year, he had a certain mannerism about him and he would call on you and then ask these sort of focused questions and sort of lead you to what he was wanting you to say, he was known as “the magician”; older man, nice guy. Malcom Sharp. There was a called Allan T. Dunham who taught Property and he would call on you as you came in, if you couldn’t answer him he would call on you the first thing every other class for the next week and he always intimidated people too.

LAW: So who were the more influential professors on you?

CUNNINGHAM: Obviously Dean Levi, Meltzer who taught Evidence, probably Francis Allen who taught criminal law/constitutional law. I remember there was a Max Rheinstein who was an older gentleman and he taught the senior class on, Conflict Resolution, and it was more of a sociological course rather than a practical one. He was a very bright man, again, he said, “I want you to attend, I want to write a paper and I want you to discuss how through history conflicts have been resolved because that’s basically that’s what litigation is about,” and we went through Eskimos to their

[01:15]

song-fest to various other primitive societies to modern day resolutions of conflicts through the courts. It was a fascinating course. I wrote on the conflict resolutions among the Jivaro Indians which were the headhunters. As you can see I had more liberal leaning, nothing on the substantive issues of law than I had by choice (chuckling).

LAW: Did the wider world ever impact the law school? Were you ever talking about issues that were going on at that time in the courts?

CUNNINGHAM: Not a whole lot, our regular Saturday night activity was to get together and watch Perry Mason [TV Series 1957-1966].

LAW: Okay.

CUNNINGHAM: Again, if you know University of Chicago at that time was an isolated island. Stony Island [Avenue], 63<sup>rd</sup> Street and Island and 50<sup>th</sup> Street North and 63<sup>rd</sup> South were areas that had a lot of violence and criminal crime, so you pretty much stuck to your neighborhood. One time a southern guy from South Carolina, another guy wanted to go down to the bars on 33<sup>rd</sup> Street so we sort of agreed to accompany him so we went down there and went to this bar, a noisy bar, there was a lot of talk/smoke and that. We opened the bar door, the three of us white guys walk in, everyone's black in there and all of the sudden all of the noise stops, the bartender looks at us when we go up and ask for a beer, he says, "Hey guys, you better get out of here while you're alive," and my southern friend said, "We have a constitutional right to have a beer," so we got our beer and I said, "I'm leaving, you guys can stay," and we all left.

LAW: That brings up a question for me. At the time and now looking back did you see Chicago as a segregated city?

CUNNINGHAM: Yeah, in many ways I see Hyde Park there at the University of Chicago becoming less and less so, in fact Hyde Park is a primary live-in now. But there are various sections of Chicago that were and that are very segregated. There are sections that are Polish, black [African American], different ethnicities, Mexican, Polish, Greeks, but that's part of the charm of the city. The ghettos are the ones that, if that's the right term nowadays, around 33<sup>rd</sup> Street or something like that where housing is poor and there

are gangs. I remember at the University of Chicago I was going down the street and I saw two groups of people and they were blacks and they were fighting and there's a cop car sitting outside this groups and they didn't get out to break up the fight because they thought it would be too dangerous. My father, when he was a Vice President in the [19] '50s, had a map of the University of Chicago area marked X's where assaults had taken place and it had quite a few X's on it. Billings Hospital which was University of Chicago hospital system was across the Midway and the nurses would walk across and they had to have protection at times because of the particular violence. One of my married friends at law school was living in the area there and he heard some shots and there were some policemen shooting it out with, probably some drug dealers, and they both ducked down on the floor and waited for it to be over with. But I think it's changed radically from the late [19] '50s. I think it is now – I'm sure the areas of 33<sup>rd</sup> or 34<sup>th</sup>, 35<sup>th</sup> [Streets], those areas are still pretty rough but the University of Chicago area I think has been cleaned up pretty well.

LAW: Any other memories from this period that you'd like to share?

CUNNINGHAM: Yeah, I'm sure there are memories, I had a full head of hair. I think one of the things that struck me is how intense this law school education was at the University of Chicago and I think it's probably less intense now but it really was very intense at that time.

LAW: Just a lot of work?

CUNNINGHAM: A lot of work. There was one man in our class, Hicks, he graduated Summa Cum Laude from Harvard and was number four or five in the class in the first

year and said he didn't like this and quit. Like I said we lost maybe perhaps fifty students. All of them scored real high on the LSAT and all of them had very good backgrounds but they just found that the intensity of that was not what they really wanted.

LAW: So you took the bar [exam] in 1960?

CUNNINGHAM: Oh, one thing I also remember, Nixon was running for office, and I forgot what year this was, but he, I'm sure it was the one that he lost in [1960], but he came to the University of Chicago and asked for students or someone from his organization to escort him around Chicago and put little buttons in our things so we could pretend to be Secret Service, so we drove him around Chicago to various places where he would make his stump speech. I remember going to a Polish section, Humboldt Park, but, big crowds, sort of fun driving bumper to bumper pretending to be Secret Service. [Herbert G.] Klein was the guy that was in our car, my car, he was I think a PR [Public Relations] guy for Nixon at that time.

LAW: So you were, by that time, of voting age. How would you describe your political and social view of the world at that time?

CUNNINGHAM: I would say independent.

LAW: Independent.

CUNNINGHAM: Yeah. I also want to put that between the last year, the second year and third year, I went to Europe again and I studied at The Hague Academy of International Law which was an interesting experience. Studied such things as a doctorate or what

they called renvoi, which means conflict of law and the Geneva Fisheries Convention became very useful for me down in Springfield, [Illinois].

LAW: Huh.

CUNNINGHAM: No, I'm just kidding. But you never knew where your career was going to take you.

LAW: Independent, expand on that a little bit for me, what do you mean exactly by independent, what does that mean to you?

CUNNINGHAM: Freedom to choose. Oh, at this Hague I stayed at a boarding house, I want to expand on that a little bit.

LAW: Okay.

CUNNINGHAM: A Dutch woman ran this boarding house and there were two of us students in there and she discussed the [Nazi] German occupation of the Netherlands and how right across the street there were these high burns that there used to be houses all over there and the Germans came in and knocked on the houses and put up these sort of burns so that no one could signal across the [English] Channel on boats or ships or things like that. There were a lot of Vietnamese in The Hague at that time, Vietnamese restaurants, that type of thing. So that was interesting not only from the courses but from the people that you met and came in contact with. There were a lot of African people in these classes and that was primarily – and they taught it in Dutch and in English so you could, obviously, I could go to the English courses, but that was an interesting adventure too.

LAW: Now when did you get married?

CUNNINGHAM: After I got out of law school and after I had my job and then I worked for the NLRB and had some time to do something other than research.

LAW: Okay, alright. So you passed the bar in 1960, where did you practice law?

CUNNINGHAM: At a firm called Dallstream & Schiff which was a law firm in Chicago and it was a corporate law firm. It was low man on the totem pole, there was no direction to who you would work for but anyone above you could come in and ask you to do research or ask you to do a project for them and it became a little hectic at times because you couldn't direct your work flow or control your work flow. And you worked pretty much three to four evenings a week. We had a restaurant you'd go to and the firm would pay for your meal. Saturdays you'd work, so it was a sort of a, and again I'll use the word, isolated existence where, at least, I burned out. A friend of mine was working at another firm, he always used to be clean-shaven, I saw him having a beard, looking pale faced, I asked him what he's doing after a couple years, he said, I forgot what he said, I think he said, "I went out to Arizona," and, played around. He just said he had enough of the law practice.

LAW: So you realized pretty quickly that wasn't the type of law you wanted to practice.

CUNNINGHAM: I realized, no that wasn't my cup of tea and it was again a pretty barren life from the point of view of social activities, getting to eat, going out. The people that really stuck with it I think were married in law school or the people who were much brighter than I was and could handle it.

LAW: So somehow this led to the NLRB?

CUNNINGHAM: Yeah, I said, "I want out," and

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I don't think I would have lasted. There was a former director of NLRB in the office there and I talked to him about this and what I thought I might be good for and he helped me get a job with the National Labor Relations Board as what they call a trial attorney.

[01:30:35]

LAW: Did you have any background in labor law?

CUNNINGHAM: Not really, again in college I had done this paper on crime and labor law on the waterfront, and I was more interested in factual situations than I was in the esoteric/legal situations and that's what I sort of fell into, that. Also, at the NLRB you would go out and investigate claims of unfair labor practice or election-type activities and that was more factual based upon determining what the facts of any given situation were and then applying the law to it. I maybe should have gone to the Justice Department, that would have been another option. And I sort of enjoyed that and I also enjoyed working forty or fifty hours a week instead of all that. My last case I had there was some black guy came in and said he was working on the Chicago waterfront as a stevedore. He said he couldn't get a job. He said the people that were getting jobs were the favorites of the union bosses.

LAW: Okay, would this have been the ILA, the International Longshoremen's Association?

CUNNINGHAM: Yes, I investigated a guy on this thing and he would meet me on the corner of such and such and such and such and I said, "Well I need someone besides you to say that," what we were talking about is a closed shop instead of a legitimate hiring hall.

LAW: Right, I understand.

CUNNINGHAM: So finally he got me two or three other people, maybe more, and I kept meeting them at midnight on the corner of such and such and they'd talk to me about some of the issues and violence and that and then I made my report to the director of the NLRB and they decide to issue a complaint, and that's about when I left, but I remember a guy from representing the Longshoremen Union coming in wanting to meet with the Regional Director and he called me in and they had a team that would review the file and make the recommendation, the team was there, and this guy from the labor union was just screaming and hollering, "We're trying to keep the crime off the docks and here this young kid is coming in and saying we're doing something illegal," and about that time I quit the firm, or NLRB, but I understand that it was resolved through some sort of change of practice; so that was interesting. Another one I had was a strike at Barber-Colman [Company] in Rockford, [Illinois].

LAW: Now what was Barber Coleman?

CUNNINGHAM: Yeah, C-O-L-E-M-A-N.

LAW: What was that?

CUNNINGHAM: It was a large plant in Rockford, I don't know if it's been bought out or not.

LAW: Okay.

CUNNINGHAM: But I just met my future wife and we wanted to go away for a weekend to that but I had to go up to Rockford to investigate this thing. So we went up there and she stayed in a motel and they put me up and I went to investigate it at the plant and there

was this picket around the plant and this guy about six [foot] two with a head at a point, he looked like he was an ex-wrestler said, "Hey buddy what are you trying to do, walk across the picket line?" And you know there were all these pickets around and he just sits up and jumps in front of me and I said, "No I'm investigating these charges," "You're what?" And I said, "Yeah," and I pulled out my credentials and he said, "Oh, let me escort you in," and we found that both the company and the union were violating the National Labor Relations Act, accompanied by hard-nosed bargaining and the union by violence. They had videos of strike breakers, workers, coming in trying to cross the picket line in a car and the picket line would form around them and all the sudden they'd break away and all the windows of the car would be smashed out. So that was probably the most violent thing I ever got into. But the work was interesting because it was fun, you were getting out there and meeting people, talking to them and trying to determine what happened. And then I had, the first trial that you have they have an experienced trial attorney sit in there with you, this was Eddie Maslosky, he was a Polish gent, feisty guy in his fifties. So I had my first case, I was putting on my witnesses and the union attorney objected and the hearing officer/examiner agreed with him and sustained that objection and Eddie Maslosky attacked the hearing officer and when I concluded my examination and the union concluded theirs the hearing examiner starting asking his own questions and Eddie went ballistic and said, "You're not the trial attorney for either one of us, you shouldn't be asking questions, you're here to rule not to ask questions," and he went on a rant like that and I said, "Eddie, cut it out, cut it out, you're ruining my first case," anyway we were successful in it but Eddie said, "That's what I'm trying to do is intimidate this guy."

LAW: So were there attorneys there that had worked for the [National Labor Relations] Board a significant period of time?

CUNNINGHAM: Oh yeah, most of their career, most of their lives.

LAW: Even going back to the Depression?

CUNNINGHAM: Cavers, who was the regional attorney, I know Mel Cavers who was a really good guy, probably was in his fifties at that so I don't know if he worked there during the Depression but not long after that, this was 1962, so no he wouldn't have been there during the Depression. The Depression was in the [19] '30s, obviously, so it must have preceded him.

LAW: But they had been there for some period of time?

CUNNINGHAM: Oh yeah, Ross [M.] Madden who was the Regional Director was one of the longest serving Regional Directors at NLRB; he had pretty much seen it all.

LAW: What were some of the big issues? Did a lot of it have to do with unfair labor practices relating to employment discrimination?

CUNNINGHAM: No, at this period of time we didn't have all these fair employment practices kicking in.

LAW: Right.

CUNNINGHAM: But it was basically someone's trying to organize a union or a company and the company was trying to prevent them from doing that, they'd can the organizers or do things that were inappropriate to slow down this organizational campaign. And the main thing they would do was to find out who it was that was behind it all then can them.

LAW: So the case with the Longshoremen's Union, that was kind of unusual then?

CUNNINGHAM: Yeah because generally most of the NLRB cases are against companies and the unions are trying to organize companies and the companies are doing what they can to prevent that from happening. And then it got into these questions of whether or not the collective bargaining, whether they were truly trying to bargain out their issues or whether or not they were just doing surface bargaining.

LAW: I understand.

CUNNINGHAM: One of the cases I got involved in involving the Doll Workers which was organizing a place.

LAW: The what workers, I'm sorry?

CUNNINGHAM: Doll, D-O-L-L, strange name but they were somehow, I think, connected with organized crime. And they had a hearing in which one of the employees or foreman testified against the union and I remember going down the elevator with a bunch of guys that looked like they were pretty nasty dudes that were not dressing very well, and unshaven, and there's this witness, but this guy going down with them, then I walked out to lunch and got lunch and came back, there was a pool of blood in front of the entrance. They had apparently knifed a witness as he was leaving. So there were some areas of violence that were ongoing, not a lot but it was usually just firing people or refusing to bargain in good faith and this type of stuff.

LAW: Now at some point you decided to leave, what prompted that?

CUNNINGHAM: Yeah, well you see I started getting free time. I went over to the Art Institute, studied art, really not to study art but to meet young ladies. Then I did some other things, took some art courses and started getting out and I went on a ski trip. At college I was on a ski team, it was not really a ski team it was sort of an ad-hoc group that got together and liked skiing and sometimes we would ski with others and sometimes we'd ski against ourselves. Anyway, I started skiing when I was probably in the seventh grade when my dad took us out to Sun Valley, [Idaho]. Then at Hotchkiss we had some skiing and we went on vacations from Yale to various ski slopes and then we'd drive up from Yale to the weekend ski resorts in Vermont and New Hampshire. I was on the ski patrol one time, weekend ski patrol, which means when someone got in trouble you call the real guys and you just stay there until they got there. Got to cut lines, wear a red parka with a cross on it and flirt with girls.

[01:45]

Anyway, I was into skiing then big time, how I ended up in Chicago I don't know. Then I decided I wanted to go on a ski trip working for the NLRB, had some time off wanted to go on a ski trip, took a bus up to Boyne Mountain and there was, and this is really true, got up there, they put us all in a motel and we're pretty chintzy on the spaces, a lot of guys in the same room and this guy opens up his satchel on the bed, looks around, there are three or four of us in the same room, he looks around, opens his satchel, pulls out a .45 [caliber pistol], lays it on the bed and says, "I can't have any fun with all you guys in this room," he looked at me and this other guy who were apparently looking pretty straight arrow, he said, "I found a place across the street, they don't allow drinking there but why don't you two guys go over there," so, not wanting to argue with a guy that had a

.45 he and I went over there and my wife-to-be was chaperoning this guy and his girlfriend, chaperone is a term you don't use much anymore, so the girls came over and ate with this guy, Ed Flexman was his name, and Ruth. Caroline and Ruth were good friends, and so we started to get together, eating together, skiing together. Caroline didn't know much about skiing, so I was fairly adept at skiing – apparently impressed her (she since learned differently). Anyway we started to make a connection and she was outgoing, smiley and happy, I was moody and grouchy. We then started, spent the week pretty much ten days together with each other, she and Ruth were roommates and Ed Flexman and I were roommates, we ate together and then after the trip was over she was student teaching in Chicago. And we started dating and I liked her upbeat mannerism and she found out she could tolerate me and my moods, so three or four months later we decided we wanted to get married, went to her mom and (she) said, “Uh uh, too soon, you don't know each other that well,” so she puts it off until June, so we'd known each other for about six months and got married. And then I lived at that time in this coach house in North Chicago, it was an actual old coach house with the horse rails up there, I put up plywood over the rails and put a mattress on top of that, that was my loft. She didn't think that was, well she wasn't complaining but she said, “This is a little Bohemian for my existence,” so we moved out to a little community outside Chicago. She went to her teaching job one direction, I went to Chicago to my NLRB job and we'd see each other in the evening and on the weekends and decided this wasn't the way we wanted to spend the rest of our lives. So, Harvey Stephens, who was a law school classmate of mine, said that they needed someone in Springfield so we decided to come down here to Springfield,

[Illinois], and work with the firm, Brown, Hay and Stephens was in about [19] '64/[19] '65 and started our career here.

LAW: Mr. Cunningham I think that's about all we want to cover for today. We'll pick up in Springfield when we meet again.

CUNNINGHAM: Okay.

[Total Running Time 01:50:00]

**END OF INTERVIEW ONE**

## BEGINNING OF INTERVIEW TWO

LAW: This is an oral history interview with Edward Cunningham. We're in his law offices here in Springfield, Illinois. Today's date is November the 10<sup>th</sup>, 2015. And today we're going to talk about his legal career. Mr. Cunningham when we last were talking with you we sort of ended with you coming to Springfield. So, I wanted to start today with, what do you remember of being your first impressions of Springfield and how did it compare with Chicago and New Haven [Connecticut] and Barrington?

CUNNINGHAM: My first impression was at a Dixie trucker's stop when I was driving down here, and they all talked with an accent down there, I thought maybe I was going to Oklahoma. It was a little bit of a shock, but when I got down to Springfield I found out that was just the trucker's stop. And we came down here, and Harvey [B. Stephens] found us a house to rent, a small house; didn't have any children at that time. And it was a lot less sophisticated then it is now. They didn't have the colleges, Lincoln Land, didn't have UIS, didn't have the medical school. And it was, the community was, sort of, if I could use the word provincial in some ways. A little bit isolated, I keep using that word, but, it didn't seem to have the sophistication that it now has. The Christmas shopping, I remember, was all downtown. There weren't any malls. If you wanted to do your Christmas shopping you'd come down to go Bressmers, which is downtown, or Myers Brothers, which is downtown. There were limited restaurants to go to. Now there are a plethora of restaurants, more than you can really count. So it was a rather small town, and small town not necessarily from the size, but a small town from the community. It was pretty much of a farm related industry type of community and state government.

LAW: So you came to work at Brown, Hay & Stephens. So I wanted to ask: when you first came to Springfield in 1965 what do you remember about the local bar at that time?

What was the composition of the local bar in terms of race and ethnicity and gender and age? Who were some of the more prominent attorneys at that time?

CUNNINGHAM: Well, multiple questions, but from the size of the Bar Association it was smaller. There were a handful maybe ten, fifteen lawyers of my age. I don't remember having any black lawyers.<sup>2</sup> We had, in the firm, the first female lawyer that practiced in Springfield, called Betty Frazee. I think there was another female lawyer that practiced, but that was about it.<sup>3</sup> It was mainly a male dominated profession. And, there weren't that many young lawyers in town either. The sophistication of the work was not that great, at least in the work that I was involved in. There were estates and probate and that was one of the main areas of practice, real estate. There wasn't a lot of business law. Our firm represented a couple of the banks, which I initially, which I thought could have been a conflict but we've tried to segregate the two. Robert Stephens Sr. who was a partner, the senior partner, represented First National and Al Schlipf, Betty Frazee represented the Illinois National Bank, which I thought was interesting; so there was a quite a bit of bank work. The leading lawyers were the guy called Sorling, or Sorling, Catron & Hardin, Bob Stephens, our senior partner, and some of the Barbers, and then you had the leading litigator who was Al Newkirk, who was over at Giffin, Winning; so they were all competent and good guys, good people.

LAW: What about on the criminal side?

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<sup>2</sup> Clarence B. Davis practice law in Springfield for over forty-five years. He died in 1973.

<sup>3</sup> According to an article in the *State Journal Register*, Sept. 24, 1967, pg. 28, there were six "lady lawyers" in Springfield at that time. Of the six, one practiced in Litchfield, and two were engaged in government work. The three others were engaged in private practice in Springfield.

CUNNINGHAM: On the criminal side we had Jack Weiner and Bob Weiner. And I don't remember, I didn't do much in the criminal work, but those were – then we had a guy called [John] Curren who was a former State's Attorney who did criminal work. But I didn't have much occasion to do any work with them. My practice was pretty much on the civil side except for an occasional venture into the criminal law.

LAW: Would you describe most lawyers at that time as being general practice attorneys?

CUNNINGHAM: Yeah, yes I would.

LAW: And was the local bar politically and socially engaged with the community?

CUNNINGHAM: Yes I think so, probably not as much as it is now but, for instance, Bob Stephens in our firm did work for Memorial Medical Center but didn't charge for it. And I'm sure Sorling did a lot of community work. But I don't think it was engaged as it is now.

LAW: In the community at that time were there political lawyers, and was there political firms; politics?

CUNNINGHAM: There were certain lawyers that did lobbying. No one in our firm did lobbying that much. Originally when I came down here [Paul] "Buck" Gordon had left and he did a lot of political lobbying. But when I came down here and worked here no one in our firm really was doing much of the political lobbying, so that area was pretty much foreign to my form of practice and to my knowledge. I'm sure there were a number of lawyers at Giffin ,Winning that did lobbying. The people that I dealt with were mainly in the general practice.

LAW: Do you have any memories of State's Attorney Raymond Terrell?

CUNNINGHAM: Yes, Ray was a, well I liked him, he was a good guy and I dealt with him in some case but I can't really remember it. He was a little bit bombastic at times but I personally liked him. He and I dealt together on several matters and we always got along; I cannot remember what those were but I remember him.

LAW: Who were the judges in Springfield and Sangamon County at that time?

CUNNINGHAM: Well we had a gentleman called Chamberlain, Bill Chamberlain; he was a Secretary of State and then got elected as a Judge.<sup>4</sup> Creel Douglass was a Judge.<sup>5</sup> Then there was this man that was a Justice of the Peace, his name escapes me right now.

LAW: Joe Maddox?<sup>6</sup>

CUNNINGHAM: Oh Joe, no Joe was a lawyer but he was Justice of the Peace with Joe Maddox. I mentioned I had a divorce case.

LAW: William Conway?<sup>7</sup>

CUNNINGHAM: Conway, Conway, and Conway was always a bit of a character, not very smart, shouldn't have been a judge really, but he was an Irishman and if you wanted to get in good with him you would always wear green to his courthouse, and Saint Patrick's Day he would have some green cake in his office. He handled mainly adoptions and

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<sup>4</sup> Former Legal Advisor to Gov. Otto Kerner, and Secretary of State, William Chamberlain was elected a Circuit Court Judge in 1964 and served until his death in 1972.

<sup>5</sup> Creel Douglass was elected a Probate Judge in 1950, and then a Circuit Judge in 1957. He was retained under the new Judicial Article in 1964 and again in 1970. He resigned in 1971.

<sup>6</sup> Joseph W. Maddox was a Justice of the Peace from 1953-64, and a Magistrate from 1964-65. He also served as a Public Defender from 1965-66. From 1966-2011 he was in the private practice of law.

<sup>7</sup> William Conway was elected a Police Magistrate in 1939, and served in that position until his election as County Judge in 1958. When the Judicial Article went into effect in 1964 he became an Associate Judge. In 1971 he became a Circuit Judge, and he retired in 1976.

family law. And I had this one case, that I started to talk about [before the interview], where we represented a young lady and she was being divorced, and she had a lot of emotional problems over this thing and the case was set for hearing on Monday, on Friday she was committed to the hospital psych unit, involuntarily. I went in, asked for a continuance, had an affidavit from the doctor, and Conway said, "Nah, we can't grant continuances on things like this, this has been set for a while, we're gonna continue with a trial." I said, "Judge but the defendant isn't here, she can't testify." "Well she put herself in the hospital," "No it was an involuntary commitment," "Well, she acted up, it was her fault, the case is not gonna be continued." Then, Joe Maddox who was a magistrate with Conway, and was an old buddy of his, said, "Judge, judge you better grant the continuance," "Okay continuance granted," so some of the judges would sort of favor their friends at that time. I don't think Chamberlain did, I don't think Douglass did, but there was a certain, having grown up together with the judges they weren't always as objective as you would like them to be; and I think Conway was particularly of that type, but anyway, it got continued.

LAW: Now do you recall any of the other magistrates, like Lawrence Swinyer?<sup>8</sup>

CUNNINGHAM: No.

LAW: Pat Cadigan?<sup>9</sup>

CUNNINGHAM: I recall working with him as a lawyer but not as a magistrate.

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<sup>8</sup> Lawrence Swinyer was a Magistrate Judge from 1965-1968. Swinyer, a WW1 veteran, served as an Assistant State's Attorney, Justice of the Peace, Public Defender, and Assistant City Attorney throughout his 50 plus year legal career. For his obituary, see, *State Journal Register*, January 8, 1976, pg. 8.

<sup>9</sup> Patrick Cadigan was a Magistrate Judge from 1965-1968. Prior to becoming a judge, he served as a parliamentarian for the Illinois Senate, and after being a judge he served as an aide to House Minority Leader T. Arthur McGlooin. He was later elected to and served as President of the Springfield Park District. He died in September of 1996.

LAW: Charles McBrian?<sup>10</sup>

CUNNINGHAM: I remember him. I don't think I had a case before him.

LAW: Eugene Duban?<sup>11</sup>

CUNNINGHAM: Oh I had a case with him. He was an associate judge at that time.

LAW: Okay. Do you remember what the case was?

CUNNINGHAM: It was *Jansen vs. The City of Springfield*.<sup>12</sup>

LAW: Okay, we'll come back to that in a little bit. What about August Caylor?<sup>13</sup>

CUNNINGHAM: I don't remember him.

LAW: Okay. So most of your work at that time when you first came was either in front of  
Douglass or Chamberlain or Conway?

CUNNINGHAM: Yeah.

LAW: Okay.

CUNNINGHAM: I really, when I first came to town, I was more into the general practice and  
the litigation. It migrated into pretty much litigation practice; from things like  
foreclosures to matrimonial issues to personal injury things. But there was a lot of  
general advice through the banks and things of this nature.

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<sup>10</sup> Charles McBrian was a Magistrate Judge from 1966-1969. Prior to becoming a Magistrate McBrian had served as a Justice of the Peace, beginning in 1941. For more on McBrian see, *State Journal-Register*, July 2, 1989, pg. 15. He died in 1992.

<sup>11</sup> Eugene Duban was a Magistrate Judge from 1968-1971, and then became an Associate Judge serving until his death in January of 1984. See, *State Journal-Register*, January 22, 1984, pg. 7 for his obituary.

<sup>12</sup> 79 Ill. 2d 435 (1980).

<sup>13</sup> August Caylor was a Magistrate Judge from 1968-1971. Prior to becoming a Judge he was the State's Attorney of Cumberland County, and practiced law in Springfield beginning in 1957. He died in 1971. See, *State Journal-Register*, November 30, 1971, pg. 10 for his obituary.

LAW: Now, at that time I believe what is now the Old State Capitol was no longer the courthouse or was it still a courthouse when you came to town?

CUNNINGHAM: It was still a courthouse when I came to town. It wasn't there very long, maybe a couple of years. But it had these old elevators that were sort of cages; and it was pretty much

[00:15]

outdated and outmoded. And they just changed the courthouse about a year or two later.

LAW: Any memories of the next courthouse which is what we would call now the old Sangamon County Courthouse, which is now like a municipal building.

CUNNINGHAM: Yes, I remember that.

LAW: Any memories of that courthouse, do you remember how it was organized and where everything was?

CUNNINGHAM: I remember the courtrooms were on the second and third floor. I remember the clerk's office was there, it was a fine; it suited the needs at that time.

LAW: Okay, so I wanted to ask you about some cases, some of your earlier cases. I thought we could start with *Wiseman vs. Law Research Inc.*<sup>14</sup>

CUNNINGHAM: Let me start with a couple of earlier ones that were probably sort of fun.

LAW: Okay, go ahead.

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<sup>14</sup> 133 Ill. App. 2d 790 (1971).

CUNNINGHAM: One was a case involving a pipeline explosion and Ben DeBoice was the older counsel involved but he didn't litigate so he asked me to litigate this thing.<sup>15</sup> And it was a company down in Carlyle that put in this oil well and somehow the oil well pipeline leaked and actually blew up. And so the company that was hoping to get oil out of the ground there sued and I represented the pipeline company, the oil company that put in the pipeline, and it was before Judge Chamberlain. And it was probably the first jury trial I had down here and I remember arguing or talking to the jury on it and one of the jurists said, "Speak up, I can't hear you," so at least that meant they were listening, but I began to speak up a little bit. Then I remember having a witness that I was having come up from Carlinville and the witness was late getting here, I wanted to talk to him before I put him on the stand. So, I got over a little bit after the judge had reconvened the court and I walked in the courtroom and the jury was all in paneled, Ben DeBoice was sitting at the counsel table looking a little bit puzzled as to what to do and I walked in and Judge Chamberlain said to me, "Well I'm glad you could make it today Mr. Cunningham," and all the jurors started snickering. Anyway, we were successful in showing that the cause of the accident wasn't the pipeline company's fault; so we had a jury verdict.

LAW: Just real quick, who were they suing?

CUNNINGHAM: Who were they suing?

LAW: Uh-huh.

CUNNINGHAM: The oil, the guy that owned the land that was trying to get oil out of the land was suing our pipeline company.

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<sup>15</sup> For more on DeBoice, see, <http://www.idaillinois.org/cdm/ref/collection/uis/id/1829>

LAW: Okay.

LAW: What was the next one you were going to talk about?

CUNNINGHAM: Well this was one on the pork belly case which I think I mentioned to you [before the interview].

LAW: Yes, you did.

CUNNINGHAM: It was a case where a couple of our clients were buying pork bellies on margin, and they bought something like fifty, fifty-two car loads of pork bellies. They lived in Rochester, Illinois. They went out of town and the commodity market was very volatile. The price went down and they ended up owing over a hundred thousand dollars before they were sold out by AG Edwards. They were then sued because they refused to pay it. They lived in a residential home in Rochester and on that confirmation of the purchases it had a statement that the purchaser intends to take delivery and that got me thinking what in the world is that all about, so I looked it up. If they don't intend to take delivery it was a gambling contract. As a gambling contract it was void. So I raised that as an affirmative defense to the suit for a hundred thousand dollars and AG Edwards got all hyper about it, they brought down the guy from the commodity exchange in Chicago to testify. But I had the local broker who sold it to them; I said, "You didn't expect these guys to take delivery of fifty car loads of pork bellies at their home did you?" He said, "No," and so I made a motion for summary judgment, and I was successful; it was a gambling contract. Then the irony of the whole thing is we had to sue the guys for our fee.

LAW: Okay. And that one, you said, was that in front of Judge Friedman?<sup>16</sup>

CUNNINGHAM: No that one, who was that in front of, yeah it might have been Si.

LAW: Now might be a good time to ask about memories of him?

CUNNINGHAM: A good guy, one of the most conscientious, low key, judges that I've ever had the privileges of practicing before. I really liked him, I thought he was very fair minded, he didn't play favorites, he went straight down the line of what he thought, whether he was right or wrong; really a good guy.

LAW: You want to talk about the Western Union case?<sup>17</sup>

CUNNINGHAM: That was before Judge Creel Douglass. A few years after coming down here, we had been, with Ben DeBoice again, had represented Western Union and filing their reports and the corporate stuff like that. Western Union had entered into a joint venture with a firm called Law Research Service, LRS, in New York City. It was the first of this legal retrieval business, like Lexis or Westlaw. What they planned on doing is putting a teletype in the lawyer's offices and, what they called Sperry Rand Fastrand drums in their offices in New York where you would type in key numbers or key words and the research would be done and it'd come back on the teletype.<sup>18</sup> Well, they got the thing going, they bought all the equipment, Western Union did, LRS hired a bunch of law students to do the indexing and the key words and that type of thing. It fell apart, the joint venture fell apart in New York City. LRS sued Western Union saying it was their

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<sup>16</sup> Simon Friedman was appointed as Circuit Judge in 1972, filling the vacancy created by the death of Judge William Chamberlain. He was elected to that position in 1974, and served until 1990.

<sup>17</sup> *Wiseman v. Law Research, Inc.*, 133 Ill. App. 2d 790 (1971).

<sup>18</sup> The Sperry Rand Fastrand magnetic drum was an early mass storage system for the Univac 1100 series computer.

fault. They were represented by a firm called Milbank, Tweed. The lead counsel, [William E.] Jackson, who was a son of a Supreme Court Judge actually, U.S. Supreme Court, didn't think that proved the case so he didn't put on any defense, maybe he didn't have a defense, I don't know.<sup>19</sup> But anyway, the court found that they had proved a case and entered a judgment against Western Union for maybe several million dollars, I forget how much, probably back in sixty-nine or maybe sixty-eight.

LAW: And this is in New York?

CUNNINGHAM: In New York City, yeah. And Western Union appealed this. In the meantime LRS and Western Union had sold franchises to this system throughout the country in maybe forty-five, forty-eight states were involved. And they would sell a state franchise and sub-franchises to various regions in the states, Illinois being one of the states. Irving Wiseman bought the franchise for the state and there were about seventeen others who bought local franchises and paid hundreds of thousands of dollars for this. They were almost all lawyers except for, I think, about two or three of them. And when Western Union and LRS were selling this program they had our local representative from Western Union involved in the sales process, so they could venue the case here in Springfield. All of the sudden Western Union got sued by about eighteen plaintiffs, Western Union got sued by about eighteen plaintiffs here for torturous interference with their franchise contracts. They based their claim upon the fact that the judgment in New York was collateral estoppel, i.e. they didn't have to prove that it was Western Union's fault, but it had already been proved. And for about three years we battled this case taking depositions in Florida, California, Iowa, Chicago and LRS was also sued by these

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<sup>19</sup> U.S. Supreme Court Justice Robert H. Jackson.

franchises and they filed a counter claim against Western Union for ten million dollars, roughly. So we took these depositions, and it was very involved and very complex. The deposition of Elias Hoppenfeld, who was the president of LRS, was in excess of five hundred pages. The deposition of these franchisees probably averaged two hundred-fifty, three hundred pages a piece; these were the days when you didn't have limitations on taking depositions. Elias Hoppenfeld refused to give his deposition except he was in town and he said, "I'll give it to you at eight o'clock at night." So, we took it, we went from eight at night until two thirty in the morning; very belligerent, very hostile. But anyway, then we got all these depositions taken and the plaintiff said, "We're ready for trial," and I said, "No judge, no judge you can't be ready for trial," and I was afraid because this was the precedent case, believe it or not, for all these other lawsuits that were filed in these other states. And I don't know how we got involved in it because this is usually a Chicago, New York law firm type of lawsuit. Maybe we got involved in it because they wanted a suit down here so they wouldn't have the Chicago lawyers to deal with. But anyway, the judge said it's ready for trial, no more depositions need to be taken, the interrogatories have been answered; everyone's done. Incidentally we took the deposition of the president, the president of Western Union here, in this case and the vice president and general counsel came out and made sure that he didn't step on any toes. Then he certified it for trial, and he was getting ready for trial and then I filed a motion to stay the proceedings. This was an interlocutory type of thing, and in interlocutory types of cases you can't appeal interlocutory types of orders like [the case was set]. I chose to file a stay and called it an injunction. You can file on the denial of injunctions on interlocutory matters.

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So, the judge said that's not an interlocutory order, this is just an order in the case setting it for trial. I said no, it's an interlocutory order because we're enjoining the plaintiffs from proceeding, [and denial of injunctions are appealable]. And he scratched his head a little bit and said nah, that's not. So we took an appeal and went up to the fourth district and the fourth district agreed that this was an injunction type proceeding and that it could be an interlocutory type of appeal. And they then ruled that since the case in New York City was on appeal and during the appeal period it was collateral estoppel, if the case in New York was reversed it could be irreparable damage to us because the suits here were based upon that determination in New York that there was a judgment against Western Union. So they granted the stay of the proceeding and to the dismay of the plaintiffs they were really sort of annoyed because this put them on hold until New York was decided [on appeal]. In the meantime in New York City we conferred with them and they decided to settle the New York case. But they said we will only settle if LRS rescinds the verdict, if you give up on the verdict and vacate it and that's what they did. LRS vacated the judgment, got settlement for whatever it was and then we came here to Springfield and said all your cases were based upon this collateral estoppel, now you have to prove that Western Union was the cause of your loss, and so you'd have to prove that case against LRS here in your local case. And they said we can't do that and I said well that's probably right. So, anyway, Western Union came out and we had a settlement conference, the vice president of Western Union came out with eighteen checks with the plaintiffs' names written on them and signed by the treasurer but no amount filled in. So we got all the plaintiffs together, they all were claiming different amounts, we said,

“Okay guys here are the eighteen checks, the blanks are here, we have six hundred and fifty thousand dollars to spend, you decide how to divide it up.” So the vice president and I left and walked around Springfield, saw the sights, had lunch, had coffee, and in the meantime our office was turned over to basically these eighteen plaintiffs who were ganging up on each other saying I deserve such and such, I need more than you or I put more in it than you did and finally at the end of the day they all came up with an amount, so we filled in the checks and the vice president signed the checks, got a stipulation for dismissal and the case was dismissed. So it was sort of an interesting strategy that was involved in getting the case stayed and then trying to settle it with all of the plaintiffs. I don’t know what happened to the other state suits, I don’t know if they settled them or not, but we were the lead case in all of these things.

LAW: Did you make the oral argument to the Fourth District Appellate Court?

CUNNINGHAM: Oh yes, Sam Smith was the guy that wrote the opinion. It was a three judge court, obviously. Sam basically said that it would be prejudicial to have judgment entered in Springfield based upon a judgment entered in New York which was on appeal. And so the case was stayed until that case was decided in New York and as I said the judgment there was vacated and left the plaintiff standing without anything to rely upon to prove their case.

LAW: What did Justice Smith think of this argument? It seems to me it was a rather unusual procedure.

CUNNINGHAM: It was, in fact I couldn’t find any supporting cases for staying something and then calling that an injunction, so it was a rather imaginative defense and I quite

frankly didn't know if we were gonna win or lose it. But he bought the logic, said this was going to be prejudicial to Western Union if the appeal was granted, so he enjoined the plaintiffs from proceeding or he sustained the injunction of enjoining them. He actually entered the injunction, come to think of it.

LAW: He stayed the proceedings?

CUNNINGHAM: Yeah.

LAW: Was this your first time in front of the Fourth District Appellate Court?

CUNNINGHAM: I don't recall. It was probably pretty close to it.

LAW: Okay. And then around this same time you ended up clerking for Justice Smith. Was that in response to this case, were they connected in some way?

CUNNINGHAM: I didn't understand the question?

LAW: Around that same time you ended up clerking for Justice Smith, was it connected to that case in some way?

CUNNINGHAM: I think it probably was. At this point in time the courts had a clerk, senior clerks, who would clerk for them who were practicing law. For instance, Bob Oxtoby was Sam Smith's senior clerk. Hugh Graham Senior [actually Jr.] was Judge [Harold] Trapp's clerk.<sup>20</sup> And these were older lawyers that were in their forties or fifties at that time. The legislature or the Supreme Court authorized a second clerk to each of the judges and after we won this case, this Western Union case, Judge Smith called up Bob Stewart, who was in our firm, Bob Stuart Sr., and asked if I would like to be a part-time

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<sup>20</sup> See, *Illinois State Journal*, December 15, 1964, pg. 12.

clerk for him. I think it was probably connected to the case, to the oral argument and the briefs. And I said, "Yeah, I would." So for three, four, five years I clerked part-time for Judge Smith and broadened my experience in lots of different issues.

LAW: What are your memories of him, what comes to mind when you think back on him?

CUNNINGHAM: When I think back on him I think of a fine gentleman. He was a trial judge, I think it was, in Macoupin County. And then he got promoted to, elected to, the Appellate Court.<sup>21</sup> And he was very much a gentleman. He was very careful in his opinions and very thoughtful, he didn't play politics, he didn't play games. He was always very courteous to the lawyers appearing before him, unlike some that I could mention. He was insightful, bright and experienced. I really liked the guy, he's a friend. I remember one of the duties I had was writing what we called pre-argument memorandums and he came in about two or three weeks before oral arguments, handed me a bunch of briefs and said he'd like me to write the pre-argument memorandums on these. And I said, "Well judge that is awfully short notice." He said, "Well if you can't do it I'll do it myself." So I did it and stayed up nights and wrote these pre-argument memorandums. He ended up having me write some opinions for him and would always review them, obviously, and make sure they were in accord with the decision of the court, which was sort of fun. And he also had get-together's with his clerks and the clerks and the judges of the Fourth Appellate District at his house. Judge [Richard] Mills was always invited there and I got to know Judge Mills. Judge Mills came from Cass County and was on the Appellate Court. I don't know if he was on the Appellate Court at the

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<sup>21</sup> Justice Sam Smith was a Circuit Judge in the 7<sup>th</sup> Circuit from 1957-64. He was appointed to the Appellate Court in 1960, and elected to that position in 1964.

same time that Smith was but they were friends. So I got to know Judge Mills, Judge [Paul] Verticchio, a number of judges.<sup>22</sup>

LAW: Do you have any memories of Justice [James] Craven or Justice Trapp?

CUNNINGHAM: Justice Trapp was – had as his clerk was Hugh Graham.

LAW: Hugh Graham Jr.?

CUNNINGHAM: No, senior, he was an older man.

LAW: Okay.

CUNNINGHAM: Yeah, and I get the juniors and the seniors with the names mixed up.

“Cracker” was the youngest, was probably the third.<sup>23</sup> Anyway, Trapp was again a very nice guy but a country judge type. But he would never let Hugh Graham write his opinions; he would always do them himself although Graham had as much experience as anyone in town. He represented railroads and lots of trial work. I sort of remember him as being sort of a guy that did his own research and did his own work and he really didn’t need a clerk if you really wanna know the truth.<sup>24</sup> And I remember Craven, both as a lawyer and as a judge. The first appeal I had up here was involving actually a school board case where I was doing the research for it and Craven said, “Well wasn’t there a case, something that pertained to this lawsuit that wasn’t in your brief?” And Buck Gordon who has since quit, but was on the brief, looked at me and I thought maybe I’d

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<sup>22</sup> Judge Richard Mills was elected a Circuit Judge for the Eight Judicial Circuit in 1966, and then elected an Appellate Court Justice in 1976. He was appointed a Federal District Judge for the Central District of Illinois in 1985, where he continues to serve. Paul Verticchio was elected a Circuit Court Judge for the Seventh Circuit in 1964, and retained in 1970. He retired in 1976. Prior to being elected Circuit Judge, he had served as Macoupin County State’s Attorney from 1956-1964.

<sup>23</sup> Hugh “Cracker” Graham III.

<sup>24</sup> Justice Harold F. Trapp practice law in Lincoln, worked for the F.B.I. as a Special Agent during WW2, before being elected to the Appellate Court in 1964. He served in that position until 1986.

missed something, believe it or not I hadn't. It was something to do with the school board and condemning the property and of that nature. So, anyway, Craven was a little bit of a very positive lawyer, judge, asked a lot of questions, sometimes was a little bit off base, but again he was a friend. And he also came to these meetings that we had or these lunches or dinners that we had at the judge's house; I got to know him too. I didn't have much before him other than that one case. I remember when he retired as a judge I had a Clinton, [Illinois] power plant case and I can't remember the details of it but we were before Judge Friedman and he was just looking at me and saying, "Ah, Mr. Cunningham's just looking for this case like that and just think of how much money he's making by litigating this fallacious claim." He was a little bit flamboyant at times, let's put it that way.<sup>25</sup>

LAW: Now, there are just two other justices I want to ask you about at this time. What about Justice [Frederick] Green and [Leland] Simkins.

CUNNINGHAM: I had cases with them,

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the last, Simkins, I didn't have any occasions with. Green, I had some cases with him, he seemed to like to write dissenting opinions of my cases.<sup>26</sup>

LAW: Okay. Now was he involved in these luncheons and get-togethers?

CUNNINGHAM: No, I don't remember that.

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<sup>25</sup> Justice James C. Craven was an Assistant Attorney General and later was in private practice in Springfield prior to his election to the Appellate Court in 1964. He served in that position until 1981.

<sup>26</sup> Justice Frederick S. Green was elected a County Judge in 1955 for Champaign County, a Circuit Judge in 1964 for the Sixth Circuit, and an Appellate Court Justice in 1974. He retired in 1998. Justice Leland Simkins was elected a Circuit Judge in 1961 for the Eleventh Circuit and assigned to the Appellate Court in 1971. He retired in 1976.

LAW: Okay. Alright, should we talk now about the Sears & Roebuck case?

CUNNINGHAM: You can talk about them a little bit. I don't have very good memory of them. But what was interesting is at the time these cases were being litigated the Chicago law firms represented Sears and they would, instead of coming down here and litigating the cases they would ask local counsel to litigate them, which has been a change over the years. So the Chicago law firms usually didn't want to come down here to litigate in front of the local bar, local judges. And so a friend of mine, Larry Cohen, referred these cases to us. There were several fair employment practice cases. There was a case involving a wrongful termination where the manager of the Sears store here in town developed a girlfriend who was also working for Sears and she somehow was getting promoted over other people with more experience than that. And the Chicago office got wind of this and fired him and he sued for wrongful termination and I think it went up on appeal. And we were successful in defending the case. But it was an interesting case from the point of view that it wasn't really sexual harassment or not sexual harassment. And Sears and its personnel policies provided that if you directly supervised an employee you were not able to have a relationship with her.

LAW: Now what about the one where it was the *Sears vs. The Fair Employment Practices Commission*?<sup>27</sup>

CUNNINGHAM: Yeah, I really don't remember that much about that one. I'd have to look it up.

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<sup>27</sup> 29 Ill. App. 3d 276 (1975). Also see, *Chamber of Commerce v. Fair Employment Practices Commission*, 29 Ill. App. 3d 275 (1975).

LAW: No, that's fine. Now I guess we could maybe talk about this other Western Union case that you had, versus the Commerce Commission?<sup>28</sup>

CUNNINGHAM: Yeah, these were rate changes, to these, Western Union wanted to, basically I think that was a rate case, and Western Union claimed the rates were inappropriately set and so they appealed that.

LAW: So I take it Western Union had continued to have Brown, Hay & Stephens as their attorney?

CUNNINGHAM: Yeah, we had represented them for most of their litigation down here either before the trial court or before the commissions and that.

LAW: Do you recall if they ever got the rate increase that they wanted?

CUNNINGHAM: I don't recall but I think they probably did.

LAW: It seems like it was a long, drawn out process to raise the rate?

CUNNINGHAM: Oh yeah, oh yeah.

LAW: And eventually I guess the Appellate Court just kicked it back to the [Illinois] Commerce Commission?

CUNNINGHAM: Right.

LAW: Another kind of interesting case from this time period is the one involving the state board of elections, Clinton Thurston?<sup>29</sup>

LAW: That's kind of a political case?

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<sup>28</sup> 59 Ill. App. 3d 752 (1978).

<sup>29</sup> *Thurston v. State Board of Elections*, 76 Ill. 2d 385 (1979).

CUNNINGHAM: No kidding. Basically what, if my memory serves me right our client was running for a judgeship, down I think it was in Cairo, Illinois, that area, and he was running in the primary against another lawyer and I don't recall exactly what happened, maybe you can refresh my memory. But there was a claim, well they went through the election and he won the election and there was a claim that he improperly electioneered or won the election but he didn't make a claim of this during, or right after the election, during, or right before the election.

LAW: An improper nomination but it wasn't challenged until after the election?

CUNNINGHAM: Oh that's what it was, an improper nomination. It was claimed that the claimant wasn't nominated and he shouldn't have been but he didn't make this objection before the election. And the election was contested in the appellate courts and the courts, and Saul Morse represented one of the parties, or represented the party with me, Saul was handling the constitutional issues and I said this isn't a constitutional issue it's a waiver issue. And as he took it and didn't appeal or contest this nomination before the election he had waived his right to contest this election. And that's what the case was won on is a waiver issue, if I remember right.

LAW: Was that the first time you were in front of the Illinois Supreme Court?

CUNNINGHAM: I don't know if *Jansen* was first or not. I probably had one or two before that. But anyway it went up to the Supreme Court because it was a constitutional issue. I argued, in the briefs, that it was waived and the courts are reluctant to decide constitutional issues if there are other issues that could decide the case. And since waiver was not a constitutional issue they decided on that basis, not on the constitutional issue.

LAW: There's an interesting line in here that I liked, it said, "Where a party is not "vigilant" or "slumbers on his rights" a court should not, in equity, allow favorable action."<sup>30</sup>

CUNNINGHAM: Yeah, that's basically that guy didn't make a timely objection to the nomination and waived it.

LAW: Now, how was arguing in front of the Supreme Court different than the Appellate Court, or was it?

CUNNINGHAM: No, not much difference.

LAW: Not much different.

CUNNINGHAM: Except you had more judges to throw questions at you.

LAW: Okay.

CUNNINGHAM: And I guess you had more judges to be, sort of, antagonistic to your position if they wanted to be that.

LAW: Should we talk about this *Jansen* case now?<sup>31</sup>

CUNNINGHAM: That was another case that was very involved. This was a young man, eighteen or so, that owned a motorcycle. And he was a carpenter by trade, he was married. One Sunday night he was riding his motorcycle out to a party at the lake, and this was at 2:00 a.m. He had been there earlier, come back home, then he was going back out at 2:00 a.m. He had been partying out there probably since five o'clock, six o'clock. On Fifth Street going out to the lake in Springfield there was a curb where it stuck out, there were parking lanes before the curb and then the curb stuck out. At that time, it was

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<sup>30</sup> Pg. 388.

<sup>31</sup> *Janssen v. City of Springfield*, 79 Ill. 2d 435 (1980).

2:00 a.m., there weren't any cars in this parking lane, and he was riding his motorcycle, along, following the curb line and hit this curb, went down, flew off his motorcycle and had severe head injuries. He was taken to the hospital and ended up with some brain injury. Then he went and contacted us about filing a lawsuit. This was at 2:00 a.m. in the morning that the accident occurred, he was on a motorcycle going back to a party he had been at; we didn't have any witnesses to what happened, he couldn't recall what happened. So we filed the lawsuit, basically against the city of Springfield, again this was a strategy decision, somewhat like Western Union, because the state of Illinois you'd have to sue the State in the court of claims and I think at that time there was a one hundred thousand dollar maximum you could get. And besides that the court of claims had appointed judges by the state and they were rather reluctant to find against their employer; so we decided to sue the city of Springfield. After we filed the suit a lady called me up, said, "You know, I was following Chuck Jansen when he had his accident, I called the ambulance and while he was lying on the pavement I went over and held his head in my lap and tried to make sure that he didn't die, didn't choke to death on blood." And so we now had a witness as to what happened, she had been following him down Fifth Street, said he was driving carefully, riding carefully, and not above the speed limit, hit this curb and flew off his bike; so now we had a witness. Well, the city of Springfield comes in and defends and says well, this curb is outside the limits of the city of Springfield, twenty, thirty feet outside the limits of the city of Springfield. So we looked it up and found out that Fifth Street was a state route, but then we found out they had signed an agreement with the state to maintain a route that was in the city of Springfield, but again this was fifty feet out, twenty, thirty feet outside the city limits; so I thought we

might be in trouble. We amended the complaint to say that the city had a duty to light and to warn of this abutment that was outside of its jurisdiction, and so that's what we tried it on. Before we tried the lawsuit I took the deposition of a guy called Burns who was a state engineer and had him discuss the curb's position and that sort of stuff and I called him as a witness in the trial. And I said to him, well he said to me, first of all,

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“What in the heck are you suing the city for, we're the ones who constructed this intersection? The city didn't have anything to do with it,” and I said, “Well that remains to be seen, I want you to answer the questions as you did in your deposition and I'm gonna ask you leading questions.” I had a stipulation from the attorney representing the city that they could ask leading questions too. So I just followed his deposition, talking about the concurrent jurisdiction, the lighting issues and what the city was responsible for and the distance. It went to a jury trial and we came up with a verdict. Much to my surprise. Judge [Eugene] Duban was the judge; and this was appealed by the city. And they appealed it to the Fourth District and the Fourth District reversed on the grounds that this wasn't the city's responsibility, or something to do to that effect. And we filed a petition for a leave to appeal to the Supreme Court and the Supreme Court took it and reversed the Appellate Court and reinstated the verdict. So it was an interesting case from the point of view that the real culprit in the thing was the state that designed the curb. The city then sued the state for reimbursement of the amount that they had to pay, in the court of claims, and they lost. So, it was a wise strategic decision to go into the state court and sue the city.

LAW: I mentioned Judge Duban a little earlier, had you had a lot of cases in front of him?

CUNNINGHAM: Oh, a couple, but not of this magnitude, this one took forever to litigate.

First we couldn't find a witness, second we found a witness and then we had all these motions by the city saying it's not us and then finally we got it down to, narrowed the issues, and then we had the trial.

LAW: Now I wanted to ask you about a couple other judges. Do you have any memories of Harvey Beam?

CUNNINGHAM: Oh yes. He was, again, a conscientious judge who had been a lawyer. In fact when I first came to town he had the offices right across the corner, it was Brunsmann, Beam & Crane. A good guy but he didn't like to work that hard. He tried to do what was right. I don't think he was political in his motivations at all.

LAW: How about George Coutrakon?

CUNNINGHAM: Yeah I had a case with him. I can't really remember all the facts of it. But there was a man that died and they denied the insurance policy, I think it was Hancock Insurance. And a guy called Maury Kepner was representing the insurance company. Coutrakon was an old State's Attorney and handled mainly criminal cases, that type of thing. But in this case we were suing the Hancock. Our client died but he was pretty much an alcoholic in some ways. There were misrepresentations on his application for his insurance, which is what they were defending on. And I remember that the case was set for a hearing the day before I was going on vacation with my wife and I made a motion to continue it. And Judge Coutrakon – and Maury Kepner was an older lawyer, probably practiced with him quite a bit; he denied the continuance. And then I really protested and he said, "Well we'll start it on this one day, the first day, and then we'll

continue it when you get back from vacation,” and I thought that was a little bit of an off-the-wall decision and I got a little mad, but anyway that’s what we did. And we were eventually successful in making our claim for this insurance company.

LAW: How about Imy Feuer?

CUNNINGHAM: I had some small cases with him but nothing noteworthy.

LAW: Wally Ackerman?

CUNNINGHAM: Yeah, I had a, let me think, I think I had, yeah, I had another claim on an insurance company. This young man was insured by, and I forgot the name of the insurance company, but he had signed this application saying that he didn’t have any mental illness; he hadn’t been hospitalized, and several other, wasn’t depressed or didn’t see a psychiatrist. It ended up, about six months after that application and the granting of the insurance policy, he died. He came home late and his dad was a bit of an old-fashioned guy, locked the house up, so the guy stayed in his car and because it was cold out he kept the car running. He was asphyxiated by the CO2 exhaust; there was a question as to whether or not he committed suicide. And there was another disclaimer in the policy that if he commits suicide his claim is not gonna be honored. And the prior hospitalizations were for depression, suicidal ideation, that type of thing. They had a coroner’s inquest about the cause of death, they found out that it was accidental, and so we proceeded to litigate the case and the question was whether or not he had falsified his application, which looked to me like he probably had. But, I argued to the judge, or to the jury, I asked for a jury trial, that he checked all these things no, he checked a box no that he wasn’t pregnant, I said, “That was to be answered only by women,” he checked

no that he hadn't had any miscarriages. I said you know who was checking these things, "It was the guy that was selling him the policy, he didn't really ask him the questions, he just checked everything so he could get his commission and sell the policy." And because he had checked that he wasn't pregnant they bought the argument that it wasn't the individual that filled out the applications. The judge was kidding me about this after we were successful in it. George Gillespie was the lawyer on the other side; he called this the pregnant man case; so we had a little fun kidding about it later on. Now, Wally and I were friends. We had some other litigation together but I can't remember what it was; as a lawyer we had litigation together.

LAW: Do you recall any contested elections for judge during this period of the 1960s and 70s?

CUNNINGHAM: Not really, other than this Thurston one that I was involved in.

LAW: I guess what I mean is here locally, were you involved politically at all?

CUNNINGHAM: No. I remember, this wasn't contested but it could have led to a problem, Judge Chamberlain – Paul Powell had died and they found in his apartment at the St. Nicholas Hotel, a shoe box filled with cash, I think it was fifty thousand dollars. And Chamberlain was a judge at this time, [Robert] Oxtoby was involved and Oxtoby represented the bank. They deposited the money but they didn't make the report; if it's over ten thousand dollars you're supposed to make the report.

LAW: Hadn't Chamberlain?

CUNNINGHAM: Chamberlain went over there.

LAW: Went over there and got the money and put it in the bank?

CUNNINGHAM: With Oxtoby and probably with [Andrew] Van Meter; political. And he got in trouble, all of them got into a little bit of trouble on that because the newspapers picked it up and I think the Attorney General picked it up. And I remember going over to Judge Chamberlain and saying, "Judge, I think this is unfair to you," they were talking about taking some sort of ADRC action, "I think it's unfair to you, if you'd like me to get a petition up of the local younger lawyers because I think you're a good judge that we like, that we support you." He said, "No, I think I've already got it taken care of." But he was appreciative of that at that time. That could have led to a recall. But it didn't. He died later on while he was still a serving judge; a good judge.

LAW: So it sounds like you weren't really involved in politics?

CUNNINGHAM: No I wasn't really involved in any of the election processes. I always checked the bar association about my feelings towards each of the judges.

LAW: Were you observing it though?

CUNNINGHAM: Was I observing it?

LAW: What was your observation of the politics of the judiciary at that time and did it affect these judges?

CUNNINGHAM: My cases were usually not political and I always thought I got a fair shake, except for Judge Conway. I respected the judges, I respected their decisions. I didn't feel that they were politically motivated, or motivated, except for Conway, as to who the parties were or who the attorney's were.

LAW: I did also want to ask you about your civic engagement at this time. I think I saw that you were a member of the Lions Club?

CUNNINGHAM: I had a lot of things I was doing.

LAW: Talk to me a little bit about what else you were doing besides practicing law?

CUNNINGHAM: Okay, you want me to go beyond 1980?

LAW: Just your first ten, fifteen years in town.

CUNNINGHAM: Okay. Well the first thing I got involved in, was the church; in the First Pres [byterian] Church I became very involved, I was

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chairman of the deacons, I was on the Session, I was chairman of the board of trustees when they had, no, secretary of the board of trustees; very much involved in that.

Conducted, I wouldn't call it Sunday school sessions but sessions dealing with what we called the human scene, problems in our society, and set up some of those. The major thing I did was, in the first fifteen years I think was, help start soccer in Springfield. I was on the original soccer team, in fact I even have a picture of that somewhere I think.

LAW: Was this out at Sangamon State?

CUNNINGHAM: No, it was with the Y. And there were three or four Americans on it, all the rest were of foreign extraction, from Norway to Greece to England, Germany, some South Americans. I played soccer in grade school, high school, college, and first year of law school. So I was interested in this and I was kicking a soccer ball around in the park and a guy called Yavus Gonulson, he was a Turk, who was really sort of the founding

father of this, started this program with the Y. So we went to the Y and said we'd like to start a soccer program, we'd like to play soccer and we'd like you to supply us the fields. A man there by the name of Walt Brantley said that he'll provide us fields if we would start a youth soccer program. So we started a youth soccer program with about three hundred to four hundred kids in the program.

LAW: About when was this?

CUNNINGHAM: About 1968, 1969, somewhere in that area. And we also had this men's soccer team and we played such teams as Eastern, Normal, MacMurray, University of Illinois, and didn't do badly against them. Most of these guys that were on the teams were from soccer clubs out in the countries they came from. As I said, there were only three or four of us that were Americans on the group. In fact, I even, I think I have an article on that somewhere.

LAW: Okay. Mr. Cunningham where are you in this photograph?<sup>32</sup>

CUNNINGHAM: See the guy in the glasses in the middle?

LAW: Right here?

CUNNINGHAM: Yeah, that's me.

LAW: Is one of these guys, you said his name was Gonulson?

CUNNINGHAM: Gonulson, yeah. (Cunningham holds up soccer photo) Here's Yavus and here's his brother, who played soccer in North Carolina, Aydin Gonulson. There's Walt Brantley, here's Harold Christofilakos who is still active in soccer. There's John Watts,

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<sup>32</sup> See, collateral file for photograph.

oh no, excuse me that wasn't John Watts, here's John Watts, he's deceased but he reffed and played soccer for about twenty-five years; he died. Here is another individual, here is, he played soccer but he died on the soccer field, he had a heart attack; he was a bricklayer. The profession's varied, Yavus worked for the department of transportation; there were a number of department of transportation people there.

BEN: Can you point out which one you are again?

CUNNINGHAM: Yes, this is me with the glasses. So we had an interesting group. I'm trying to think of who the other Americans are on it. This was Walt Brantley with the Y and helped start the soccer program. And, let's see, Cavallo who is from Columbia. Let's see, other notables, Aydin's brother ended up being the director of the program at the Y after Walt Brantley died and then he came over and started coaching UIS and was the coach there for many years. So that was a fun thing, I played for maybe two or three years but then I got involved in Western Union and didn't have the time. I reffed and coached for another twenty years. As my kids grew up I was always coaching them in soccer.

LAW: It's pretty incredible how much soccer has grown in the last thirty or forty years.

CUNNINGHAM: Another thing I want to add is in the mid-1970s they didn't have soccer in the high schools and this Y group, or the soccer club as we called it, said we'd like to get soccer in the high schools. So Yavus and Aydin and I, and maybe a couple others, went to the school board and wanted to get soccer in the school programs. The football coaches came in and objected. They didn't wanted soccer in the school system; they'd lose some of their players. So we argued that back and forth and then finally the school

board said if you make a contribution towards the expense of starting the program we'll do that. So the Y got together, the club got together, actually, not the Y, and contributed a couple thousand bucks to start the program and from then on they started the program. A lot of the individuals on this soccer team coached at the high schools. The soccer program, was originally by the Y, was from four or five years old to up to seventeen. Pretty much the older group went to the high schools and we still had the younger ones in grade school and younger. I remember the first time we had some younger teams, four or five year olds, they followed the ball around like little chickens following their mother around; they didn't have any idea of positioning or that. So we had a rule that everyone had to play on your soccer team so you didn't exclude anyone. And in the last quarter of the soccer game what Yavus and I would do is empty the benches and have them all go in there and kick around and follow each other and have a good time, frequently the kids didn't know who won or lost; it was fun. With the older kids it was a little bit more intense. They played to win as everyone did but they were more competitive in that. So anyways we got soccer fields out at Sangamon State, as it was at that time, and started playing out there. Originally we played on an old movie theater grounds that we cut and marked ourselves and then it started growing. And I think it was at that time Yavus' brother Aydin became the coach of the UIS soccer team and they started these fields out there. So it was a growing program, originally we had about four hundred, by the time I quit we had a number of different leagues, we had it in the high school and had in excess of four thousand in the Y league.

LAW: Wow, that's just incredible. So you were definitely involved in soccer, involved in your church, your Lions Club.

CUNNINGHAM: I was also involved in the bar association.

LAW: The bar association, okay.

CUNNINGHAM: I don't know exactly when it was but I was in the House of Delegates for a number of years. I was on the various committees like the Civil Practice Act Committee, Malpractice Committee, Litigation Committee, Hospital Committee. I also was one of the founding members of the Illinois Hospital Association, which has grown.

LAW: Why was civic engagement important to you and why should civic engagement be important to lawyers?

CUNNINGHAM: Well it sort of gets down to why I decided to come to Springfield. I was working at this firm in Chicago, a large firm, and working long hours, and I don't know if I've said this before but I was walking by one night about ten o'clock at night back to my single-room efficiency apartment, not married, and saw this guy on the street corner, and this is really true, he was sittin' on some cardboard and had this little brown bag with something in it saying, "Smile buddy, life ain't that bad," and I said, "Can I drink some of that." And that started me thinking that this really wasn't the lifestyle that I really wanted. So I went to NLRB and found that having extra time in the evenings, and on the weekends, was sort of a blessing. Then I got married and my wife came down here, we came down here, my wife didn't like living in Chicago and I didn't like living in the suburb because you wasted too much time getting to and from work. So we came down here and it gave you more spare time to do things that you were really sort of interested in that would fulfill your lifestyle; have kids, play with them. Wouldn't get a 6:30 train into Chicago and see your kids on the weekends. And so you got involved in other activities

the kids were involved in, got involved in the PTA, and that made your life a little bit more fulfilling. And whether you developed a client base from that I don't know. My primary work was doing litigation and I don't think that really helped on the development, but a lot of people in probate area found that civic involvement clubs and things like that was good for developing a practice, and in the church, that type of thing. So, not too many of the church members got sued, didn't pick up any business there. I did represent the church when we defrocked a minister in the seventies. We didn't defrock him we decided that we didn't want him as our minister.

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I was head of personnel committee out at the church and I went to him, there were rumors about his lifestyle. I went to him and asked him if this lifestyle was correct, it wasn't gay or that, but it was sort of activities with younger ladies, and I met with him, said "I'm head of the personnel committee and I want to know if these rumors are true?" He said, "Have you ever looked at a woman and said boy I'd like to do something with her?" I said, "No really haven't but I'm sure that's human." He said, "Well if your eye," I forgot his words, "but if your eye deceives you, you pluck it out." I said, "Well, no, that's not what we're here to talk about, not to talk about me, we're here to talk about you." The church was really in turmoil over this and I was trying to resolve it. The Presbytery got involved, we had a hearings on it and eventually they dismissed him from the church. So I guess that was an extracurricular activity. It was a pretty traumatic, then he wrote a letter to members of the church talking about myself and about six, seven, eight members of the church that were investigating this thing and someone said I should sue him for that. I said, "No, I've never been associated with such high standing people in my life, I

like it.” Chuck Northrup was another lawyer involved in that, there was Roy Wehrle he was head of the Boy Scouts; so there was really a lot of people complaining about him.<sup>33</sup>

CUNNINGHAM: I look at the soccer thing as probably one of the best things I ever did.

LAW: Okay, Mr. Cunningham I wanted to ask you about a couple of other cases. The first one, which I found really interesting, was this *Dugan Oil Company vs. the Coalition of Area Labor*.<sup>34</sup> So, first off, how did you get this case to begin with?

CUNNINGHAM: Well I had worked with NLRB, as I’ve told you, and Seyforth Shaw was basically the Chicago counsel that was representing Shell Oil Company and they basically referred this case down to me knowing I knew people up there and that I had worked with them on various labor cases. So what happened was that the city of Springfield was— well let me back up, Shell Oil was going to open a coal mining plant in Elkhart and they were going to hire non-union workers to build the mine and the plant. The Coalition of Area Labor was a loosely formed group of labor union leaders, members, University of Illinois professors and that, liberal crowd. They didn’t like the idea of hiring non-union laborers, particularly ones that were out of county. So they started trying to convince Shell Oil and others – the city was going to buy coal from the Elkhart plant, so they tried to put pressure on the city and on the local Shell dealers to convince Shell Oil to hire local labor, union labor. And they started this thing with meetings in various labor halls and in order to put pressure on the city and on Shell they started boycotting, or picketing Shell Oil station dealerships here. Unfortunately for them the Shell dealers were independent contractors so the Shell stations were not owned by

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<sup>33</sup> Troop 14 was sponsored by the First Presbyterian Church and Wehrle was the Scoutmaster at this time.

<sup>34</sup> 98 Ill. App. 3d 126 (1981).

Shell; so this is what we call a secondary boycott. They started doing what they call mass-picketing of these stations. They would get maybe a hundred people around these stations so no one trying to purchase gas or whatever there couldn't get in. They did this at Shell stations throughout the county.<sup>35</sup> So we got hired to try and prevent this mass picketing. We started filing injunction lawsuits. We didn't represent Dugan, that was a dealership, but we represented all the Shell dealerships. And they basically hired us but the Coalition didn't know that. So we filed injunction suits against the various courts who joined this mass picketing because it was a secondary boycott. We then would travel around from court to court getting these injunctions. Si Friedman was the one that handled the ones here in town. He basically enjoined them by calling them a secondary boycott because these were trying to put pressure on Shell by boycotting, by picketing, mass picketing the independent contractor stations.<sup>36</sup> We got these injunctions and Tom Appleton was incidentally representing some of the Coalition at that time; he became an Appellate Court judge. And we were successful and then they, a Coalition of Area Labor, took an appeal. One of the things I remember about this is that they were trying to put pressure on the city not to buy coal from Shell and Mayor Houston was the mayor at the time, I remember a meeting where they were all up in arms and the mayor put on a button called Coalition of Area Labor and he really sort of frosted me because he was obviously taking a stand.<sup>37</sup>

LAW: But that was before the injunction?

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<sup>35</sup> See, *State Journal Register*, January 6, 1981, pg. 1 and January 10, 1981, pg. 11.

<sup>36</sup> See, *State Journal Register*, February, 14, 1981, pg. 13.

<sup>37</sup> See, *State Journal Register*, January 13, 1981, pg. 1.

CUNNINGHAM: Yeah. And then it went up on appeal and the ACLU from Chicago hired some attorneys, or somehow they got involved there, they were ACLU attorneys, on a voluntary basis, to appeal these injunctions on the grounds that this was free speech. Well they lost, it was a secondary boycott and they were harming independent contractors and not going directly against Shell.<sup>38</sup> That's how that got resolved and they went ahead and built the mine, sold the coal to the city and the Shell independent dealers sold gas to their customers. They could have two pickets out there but they couldn't block the traffic coming in and out.

LAW: I guess there was talk of appealing it to the Illinois Supreme Court?

CUNNINGHAM: Yeah.

LAW: Did that ever happen?

CUNNINGHAM: No, I don't think it did, I don't recall it happening. They might have filed a petition for leave to appeal, which wasn't granted; I can't remember.<sup>39</sup>

LAW: Okay. Now were these pickets violent at all?

CUNNINGHAM: No, I had picketing at Allis-Chalmers plant way back when, the seventies, that was violent, but none of this was violent it was really just blocking ingress and egress to the stations.

LAW: Do you think that picketing put any pressure on Shell at all?

CUNNINGHAM: No, Shell's too big a company, they could tell them to go take a hike.

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<sup>38</sup> See, *State Journal Register*, July 17, 1981, pg. 25.

<sup>39</sup> See, *State Journal Register*, December 2, 1981, pg. 120. Leave to appeal was granted, but the Coalition of Area Labor had disbanded and given up the boycott by that time.

LAW: Well there were also some articles in the paper about how Shell was talking about having some negotiations with the Coalition of Area Labor?

CUNNINGHAM: Yeah, I was not involved in that.

LAW: And I guess also it went to the NLRB?<sup>40</sup>

CUNNINGHAM: No, again, I wasn't involved in that part. At least I don't recall being involved in it, let's put it that way.

LAW: Okay. Anything more you want to add on that case? Did you have any other labor cases, you talked a little bit about the Allis-Chalmers case?

CUNNINGHAM: Oh yeah, I had a bunch of labor cases. I had one case, it was a chemical plant [Borden Chemical Co.], Illiopolis has since changed hands, I guess it was an economic strike, they were bargaining over wages and hours and working conditions, and they couldn't get together so they called a strike. They had an access road which was maybe a mile long along the side of the plant, the labor union started picketing the entrance to the plant and it wasn't just a picket or two but it was people lined up all along the road with sticks, picket signs. The plant hired individuals to come in, or there were some plant workers that wanted to come in. They would pick them up at various locations with a bus and then bring them in. All of the sudden this would turn violent, they would start throwing rocks at these buses and blocking their ingress and egress. And so we got involved, a Chicago law firm asked us to get involved, called them up, their labor negotiators, we said, "We want to come out to the plant." They wanted us to drive through the picket, probably get our windows broken or something like that. The

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<sup>40</sup> See, *State Journal Register*, January 31, 1981, pg. 3. Also see, May 5, 1981, pg. 7, and May 6, 1981, pg. 6.

attorneys from Chicago that were representing, that hired us, said, “No, come in the back way, you don’t want to get killed.” So we came in the back way. And we investigated the case and filed for an injunction against this mass picketing again. I think Si Friedman was involved in this again. We had a hearing on the injunctions and Si denied the injunction but he said they could picket out there, and I got a little bit perturbed but he limited the picketing to a few number of pickets, not this mass picketing; so that resolved that dispute.<sup>41</sup>

Allis-Chalmers also had labor problems when they were here. And this Fiat Allis, at one time it was Allis Chalmers then it was Fiat Allis; but every three years there would be a strike. And I think this one was before Judge Londrigan, that I remember. I get a call at about six-thirty in the morning, usually, saying that they’re out there picketing, blocking people from coming in. So we’d go get an injunction

[01:45]

and they said, “We weren’t really blocking them,” but I said, “You were intimidating them,” there were strikers who had fire wood in their hands, logs. I said, “Well it’s intimidating, the people can go through but they’re having these logs in their hands and that’s intimidating.” He said, “Well it was just fire wood,” this was Harold Katz from Chicago, I said, “No, to those guys trying to cross the picket line it looked like clubs,” so we got our injunctions. That happened every three years, every time they’d negotiate a contract they would try and force a better deal by picketing.<sup>42</sup>

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<sup>41</sup> See, *State Journal Register*, June 2, 1979, pg. 17. An injunction was not granted by Judge Friedman in this case.

<sup>42</sup> See, *Illinois State Journal*, March 31, 1971, pg. 2, January 31, 1974, pg. 2, March 8, 1977, pg. 72, March 16, 1977, pg. 2, March 24, 1977, pg. 2, May 2, 1977, pg. 2. Also see, May 3, 1983, pg. 1. Fiat-Allis closed its Springfield factory in 1985.

LAW: What are your thoughts on using injunctions to resolve labor disputes?

CUNNINGHAM: They don't resolve the labor disputes. You can have informational picketing, we're on strike, we want better wages, etcetera, etcetera. But when it physically interferes with a person who wants to cross a picket line then I think it crosses a line so-to-speak and that's illegal, shouldn't be able to do that. Secondary boycotts, getting involved individual employers who are not related to the labor dispute is illegal. A number of construction sites had these problems. Let's say there was a plumbing company that wasn't union and it was doing the plumbing work at this plant but the other workers were union workers or the other workers weren't union but we didn't have a dispute. You'd have a gate for those individuals that were the plumbers coming in to the plumbing work, a reserved gate for them, and so they could picket that gate but they couldn't picket everything else. I think that was a fair resolution of these issues.

I also was involved, in seventy-four, in a number of organizational activities, seventy-four to eighty, and the major one was the hospital Memorial Medical Center which is when we started really representing Memorial. It was a not-for-profit, companies, hospitals were included in the National Labor Relations Act of 1974; it was about September I think. Prior to that time the Laborer's union had been trying to organize Memorial knowing that this was coming up and the day after the legislation got approved, the national legislation, they filed a petition for what we call wall-to-wall units at Memorial Medical Center from the janitors to the nurses.<sup>43</sup> And for six months I was involved in that organizational campaign trying to direct the strategy to defeat the union. And when we got involved one of the things you have to do is submit to the organizing

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<sup>43</sup> See, *State Journal Register*, October 22, 1974, pg. 17.

union a list of your employees; it's called an Excelsior list. We submitted a list; they had at that time one personnel director and an insurance clerk for the whole hospital. The list included people that weren't there anymore and didn't include people that were there; so we had some initial problems with that. Then, they started the organizational campaign, they were meeting with people in their homes, and getting the nurses organized, getting the janitors organized, getting the other folks organized, and we decided that we would have a Snoopy campaign. So one of the more talented people in public relations started drawing up Snoopy campaigns, probably violating the copyright having Lucy with her five cent psychiatrist sign, someone coming up asking her, "What do you think about this union?" and Lucy saying, "You must need psychiatric help if you're thinking about it," you know these types of fun things. But we also had letters going out to members saying you don't want a third party interfering with your ability to get ahead, you don't want a third party controlling your salary, your wages, this type of thing and this went on for about six months. And then during that period of time they had a number of meetings with employees and we had a hearing with the NLRB where the unit was determined, that went on for about three days.<sup>44</sup> They wanted to include the dining room workers, the nurses, everyone, and we went into the dining and they didn't have the cooks, they had the meat cooks, the vegetable cooks, so they had all these, maybe a hundred different classifications for the dining room; so that was a big mess. Finally they certified the unit but before they did that we had some strategy discussions, we wanted them to include others in this unit that we thought would vote no, such as the pathology department, the psychology department, where they had professional people that were Master's and PhD's so they would be in with the janitors and we were able to include these people.

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<sup>44</sup> See, *State Journal Register*, November 1, 1974, pg. 12, November 13, 1974, pg. 12, and January 4, 1975, pg. 24.

George Phillips was the President at that time, the problem I said to him was, “That if we are petitioning to include them and they win the union then they’re gonna be in the unit, you’ll have to bargain over them,” and he said, “I’ll take that risk.” So we went through this rather lengthy hearing process, lengthy union campaign. We had an election, there were eight hundred, nine hundred people in the unit and we were successful by fifty or sixty people.<sup>45</sup> And the union then filed objections saying that we did a lot of nefarious things and that the election should be set aside. They also filed charges for questioning employees, interrogation, potential threats. At this point in time I was named as one of the individuals in one of these charges, having observed the union or spied on the union. Well I had lunch in the cafeteria when they were talking and I was looking over at them and they were looking over at me, but anyway that knocked me out from having to be at the trial of these cases. We got Seyfarth Shaw involved and there were two cases, there was an R case and a C case.<sup>46</sup> If there’s a C case involved it’s tried by the regional NLRB staff, if there’s an R case it’s tried by the union attorney. We, Seyfarth and us, made the determination that we didn’t want the NLRB trying the case because they’re far more prepared than a union attorney would be. So we made a recommendation to settle the C case which would be a notice only, we settled that, put a notice up. George Phillips didn’t want to do that, we said to him if he didn’t settle the C case both Ed Bergmann of Seyfarth and I would go to the board and tell them that they needed to do that. He then agreed but the next thing I knew I got a call from Link Tummy, who was assistant Vice President, that Seyfarth was fired because George Phillips didn’t want to sign that and didn’t like being threatened. But anyway, then we went ahead with this R case and the

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<sup>45</sup> See, *State Journal Register*, January 10, 1975, pg. 12. The election was held January 31, 1975.

<sup>46</sup> An R case is a Representation case, a C case is an Unfair Labor Practice case.

union attorney came out from Washington to try the case, he was ill prepared, didn't try it; we won the R case. The hospital hired a firm from New York to handle the R case and try the R case along with me. As I said as I was named in one of the charges I couldn't really be the lead attorney. This guy was really obnoxious, and putting on the case he got the hearing officer all teed off at him and she came to me during a break and said, "If he acts like he does anymore like this I'll call the regional director and we'll bar him from the case and it will be your case." I go into the attorney and say, "Hey guy you're trying the case, I want you to continue trying the case but be nicer," and he stayed in the case and we won it.

One of the things that came up during the course of this campaign the union complained to the Wage and Hour department [U.S. Department of Labor] that they weren't getting overtime like they should; this was gonna be a big issue in the campaign. So Harvey Stephens and I, Harvey knew the director of the Wage-Hour department here in town, he and I went to the Wage-Hour guy and said to him that, "We're concerned about this, they might have a good case, we'll cooperate with you in your investigation, the hospital will, and if you find there's merit to it we'll settle with you but we're gonna ask you to postpone your investigation until after the union campaign because this will make it a big issue in the campaign," and he agreed to. So after the campaign was over we went to him, we hired our own auditor, our accountant, to do this so there would be attorney client privilege and we found that there was significant over-time violations. Then we recommended settling it. At this time this New York law firm was involved and they went to George Phillips and said, "Don't settle it we'll fight it, don't settle it we'll fight it." So I went to Russ Beckwith, the comptroller, and he said, "We told him we

would resolve the case if they didn't interfere with the election, we're gonna settle it," so we settled it. But it got me in a little bit of hot water there (chuckles), I wanted to make sure that the director of the Department of Labor didn't really get a thing out about the hospital because it would be triple damages if they wanted to go ahead and prove their case. So anyway, that resolved that election, then I had about a half a dozen other election cases throughout that period of time.

[02:00]

LAW: Wow.

CUNNINGHAM: It was fun; we lost one, won all the rest. The one we lost was a small unit where they threatened to – no I think I lost two, where the supervisor threatened the employees with a gun, said, "If you vote for it I'll shoot you." That made it what we call a Joy Silk Mills case where they had mandatory bargaining and mandatory recognition.<sup>47</sup> The other one was another small unit, a gravel pit, where the owner of the gravel pit was sort of a redneck and he treated his employees similarly, very harsh, no health insurance, no vacations, nothing like that, so they had a good point; they won the election.

LAW: What do you think the nature of the resistance to the union was at Memorial? Why were they so resistant to the union organizing?

CUNNINGHAM: Why were they what?

LAW: Why were they so resistant to the union, why did they fight them?

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<sup>47</sup> *Joy Silk Mills, Inc. v. National Labor Relations Board*, 185 F. 2d 732 (D.C. Cir. 1950).

CUNNINGHAM: The hospital? Oh heck, well first of all it was a wall-to-wall unit, since that the NLRB has said we don't have wall-to-wall units and hospitals you have janitors, you have nurses, you have whatever other categories.

LAW: Multiple bargaining units?

CUNNINGHAM: Yeah, multiple bargaining units. If they had won the election and they wanted to bargain over wages, hours, and working conditions that would put the hospital in a very difficult position. They couldn't strike unless they went through a process of mediation but it took the wages, the hours, the working conditions, i.e. how much they got paid, health insurance, vacation time, disciplinary actions; basically they would control the hospital. Most unions, as you I'm sure you know, have a contract that provides that employees have certain rights and if you terminate them or discipline them and if anyone wants to contest they can take it all the way to arbitration; costly, cumbersome and difficult for the management. Since that time they have a whole large group of personnel, the personnel department is a very large group now.

LAW: Have they had labor peace since then?

CUNNINGHAM: Since that time we've had a couple, I don't know in recent years because I haven't been involved. But from the seventies to the eighties they had a couple of attempts to organize them but all of them fell short. They started getting into this fair employment practices stuff where you discriminate because of being a female, being a black, being a minority, that type of thing.

LAW: Is there any merit to those claims?

CUNNINGHAM: Not much, sometimes a supervisor would overreact, play favorites.

LAW: You've mentioned a few times that you've been referred cases by some friends up in Chicago, was that friends from law school or from when you were working for the NLRB?

CUNNINGHAM: When I say friends it was people that I – well, let's back up, when originally I came down here the Chicago law firms generally didn't practice down here, they would use local counsel either as local counsel to them or would turn the case over to local counsel. They didn't have the staff, they weren't that large, so they would prefer to use counsel that they had down here that they had relations with either through having worked with them before or knowing that people that worked in their firms. Schiff Hardin referred cases to me, NLRB people referred cases to me, people I went to law school referred cases, so it was a variety of things. Things have changed a bit since then, because even the Chicago firms have gotten branch offices down here and they're less reticent to give up the work, they want to keep it more to themselves; at least that's my perception of what's happened.

LAW: Did this particular firm have a reputation for handling certain types of cases?

CUNNINGHAM: I think locally we do, yes, handle's hospital, medical malpractice, school district, banks, probate, estates, trusts, I think that's probably what our core businesses were. There have been a scattering of other things but I think those are just the core areas. Criminal law, now we didn't originally do any criminal work except some that we were appointed to.

LAW: I wanted to ask you about that. When you first came to town this was before there was really a public defender?

CUNNINGHAM: That's correct.

LAW: So did you have, yourself have, cases where you were appointed?

CUNNINGHAM: Yes.

LAW: Sort of like on a pro-bono basis?

CUNNINGHAM: Yep.

LAW: How long did that last?

CUNNINGHAM: Probably five to ten years, five, six years.

LAW: And it was supplanted by the more formal public defender system?

CUNNINGHAM: The ones that I was appointed by were the federal courts and the one that sticks out to me, during the Vietnam War, there was a Jehovah's Witness that refused to go into the service.

LAW: Okay so this was a draft case?

CUNNINGHAM: Yeah. And he refused to do alternative service too and so they prosecuted him. It was sort of a difficult case for me because he was standing up for his principles but there's no real defense to it. Judge Omer Poos was the one that handled that case and the guy got sentenced to jail. I had a couple other ones.

LAW: That raises for me a question of, I mean, when you first came to town was when the Vietnam War was beginning.

CUNNINGHAM: Yeah.

LAW: What were your thoughts on the Vietnam War?

CUNNINGHAM: I felt that we were getting into something that was gonna come back to haunt us. I was in Chicago at the time of the sixty-eight convention. I don't know what I was doing in Chicago because I was working down here then.

LAW: Yeah you referenced that in our last interview.

CUNNINGHAM: Yeah. And it was a really rough period of time and many people were very emotional about it. The draft dodgers – I had a client that refused to be drafted and went to Canada. I had mixed emotions about it, I was wondering how sound it was. And, just like I feel about the Iraq thing, I feel that we went into ventures that were questionable as to whether or not we should have.

LAW: Now did that feeling about the war in Vietnam, did that, do you recall what caused you to feel that way, did that develop over time, did you feel that way from the beginning?

CUNNINGHAM: I felt the way that it escalated with [President] Johnson that I thought that we were getting into a snake pit.

LAW: What about when Richard Nixon came in? What were your thoughts on Richard Nixon?

CUNNINGHAM: This is interesting, in law school Harvey Stephens and I drove Nixon around in the presidential election. I really can't think, my thoughts were pretty much the same, is this ever gonna end; how lucky I was to be too old to be drafted. Friends of mine were drafted and served. I really wasn't into thinking we should be there but I was into supporting our efforts once we got there. I thought it was a bad decision but once we're there you gotta carry it through.

LAW: Any other thoughts on Richard Nixon?

CUNNINGHAM: Later on, what a crook. He was deceitful, had his enemies list, probably was paranoid, wasn't open. I probably voted for him but I was probably sorry that I did.

LAW: Both times or just once?

CUNNINGHAM: I forgot who he ran against the second time?

LAW: George McGovern.

CUNNINGHAM: Yeah I probably voted for Nixon, George McGovern was a little too liberal for my cup of tea.

LAW: So were you following the Watergate hearings?

CUNNINGHAM: Oh yeah, oh yeah.

LAW: So what did you think, being a practicing attorney, of all of that?

CUNNINGHAM: I thought that this was absurd, that this was something that should not happen in our country; the cover up. First of all the Watergate spying on and trying to sabotage an election process was wrong, but trying to cover it up and getting up to Nixon where he would cover it up, that and destroying the tapes where they had shown his conversations. These guys were acting like the mafia, like the criminals. They had just lost their sense of values. So it comes out, you don't get elected, at least you're not a criminal. Maybe some of our elections, people are being elected have lost their values, they'll do anything to get elected and stay in office, from taking bribes from lobbyists to falsifying testimony. Dean [Edward] Levi our law school dean became Attorney General after [John] Mitchell got indicted and there's no excuse for Mitchell having done what he did, loyalty to friends, loyalty to the political party; just resign and say I don't want to

have anything to do with this anymore, but you don't have to lie and cheat, that destroys our democracy, what we have of it.

[02:15]

LAW: Historians, they talk about how that was sort of a watershed moment in terms of Americans having faith and trust in their government.

CUNNINGHAM: Yeah.

LAW: Would you agree with that?

CUNNINGHAM: Yeah. I would agree that the other thing that destroyed our faith in government is *Citizens United*; that's later.<sup>48</sup>

LAW: That's a little bit later, right. Well, I wanna just talk about one more, a couple more, cases and then we'll finish for today. There's another case from around the same period of time as the Dugan Oil case, that's that *Glasgow Electric Company vs. The Department of Revenue*; any memories of that one?<sup>49</sup>

CUNNINGHAM: Yeah. Is that the case; was it a tax revenue case?

LAW: It had to deal with; I guess the final ruling was even though the appeal bond was filed late...

CUNNINGHAM: Yeah I remember that one. Okay, we represented an out of state company, in fact it was in St. Louis, that was contesting the taxes on their product. We had our hearing at the revenue department, they ruled against us, they ruled that our client owed the taxes and we took an appeal on that. Because they were out of town we couldn't get

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<sup>48</sup> *Citizens United v. F.E.C.*, 558 U.S. 310 (2010).

<sup>49</sup> 86 Ill. 2d 346 (1981).

the bond in twenty days which was a requirement of the statute. So I talked to a younger guy in the Attorney General's office that was handling the case and he agreed to extend the time limit. He quit the job at the Attorney General, went on and practiced law in a private firm and a new guy came on board and he filed a motion to dismiss saying that filing the bond under the language of the statute was jurisdictional. Basically the statute said that the bond for the amount of the taxes owed should be filed within twenty days and if not the court would order judgment for the claim to revenue. They brought this up to Judge [Richard] Cadigan and Judge Cadigan said, "Yeah you didn't file it in twenty days, this is jurisdictional, entering judgment for the Department of Revenue." Well that might have been the first time, the only time, I felt maybe I had engaged in some malpractice because I didn't file it in twenty days, clearly contrary to what the statute said but in accordance with the agreement that we made. The argument was that the Attorney General can't waive jurisdiction. I made the argument that this can't be jurisdictional because it said if it's jurisdictional that means that the only thing that the court can do is dismiss the case, it has no jurisdiction to decide the case. Well the statute also said that it will dismiss the case and enter judgment for the Department of Revenue; well that means that the court still has jurisdiction to enter a judgment. And I went up on appeal on it and the court bought that that this was not jurisdictional, that it was something that the judge could say hey I still have jurisdiction and I'm gonna listen to the case. So anyway we appealed and won it, the revenue department gave up and they didn't have to pay the taxes. I thought it was sort of fun to interpret the statute that way, because clearly it was a case of first impression that had always been used, that if you didn't file a bond in all the prior cases you had to enter a judgment for the department.

LAW: Now had you been involved in other cases with the Department of Revenue?

CUNNINGHAM: Several other cases but I don't think they ever went on appeal.

LAW: Okay.

CUNNINGHAM: One of the things that these various cases show you, we weren't that specialized in our practice as people are now; you handled all types of cases.

LAW: Indeed. Well Mr. Cunningham why don't we end our interview today on – you've moved to Springfield, you've been practicing law for a good long while, you've had a family. How did being a father and a husband impact your work life and vice versa?

CUNNINGHAM: Well, that impacts your work but the thing about practicing downstate in Springfield is that you could drive home for dinner then come back to the office and go to the office on Saturday morning and coach soccer on Saturday afternoon. The hours were not quite as bad as Schiff Hardin but they were two hundred hours a month or more, so you're working fifty plus hours a week. It led to a much more rewarding lifestyle because you could spend time with your kids, you also had a wife that was very much involved with the children. I was on the school board, not the school board but on the parent committees at the schools. You can do those things where as in Chicago, if you commuted to a suburb you couldn't. Maybe I told you about this, his name was Van Fleet.

LAW: His name was what?

CUNNINGHAM: Van Fleet, he lived in a suburb of Chicago. One day I came in on Sunday to catch up on some work, at Schiff Hardin, I got in there maybe ten o'clock, he was at

his desk working. I said what in the world are you doing, he said, "Well I have work to do." I said, "What time did you get up, come in?" He said, "Six-thirty, on Sunday."

You know, that wasn't the lifestyle I wanted to lead. And so working down in Springfield you didn't have the real high-flying things like these multiple district litigations, toxic torts; these types of cases, but you had a much more pleasant lifestyle where you can spend time doing things outside the office, spend time with the kids, your wife, sometimes I even skipped vacations down here but it was a matter of choice. Up there it was really, very high pressure from the young associates, everyone above us was a boss, could ask you to do things. Sometimes you'd have to tell one boss no I can't do this because this other boss told me to do this, he'd say, "Well mine comes first," "No, you talk to him about it, I'm not gonna make those decisions," and he'd walk out the door and say, "Mine comes first." So those are things that led me to say I don't want to live in this environment, I want to live down where I'm a little bit more in control of my life.

And the other thing about practicing downstate is that when you took on a case I was really in charge of the case, it wasn't someone else that was telling me what to do, you felt more responsible for it and the results were something that you worked for and felt rewarded when you were successful. You could spend time in church, you could spend time coaching soccer; you could spend time on other volunteer activities that you thought were worthwhile. One of the things I did was work for child and family service where they had, volunteered for it, when they'd have us work with work cases that had problems and they didn't know how to handle it. We had a team of nurses, sometimes doctors, lawyers that would help advice these people on these, from child abuse cases to runaways to everything, and you felt that you were contributing something at that point

rather than earning a paycheck. So, that's why I ended up down here, sometimes I regret it sometimes I don't.

LAW: Mr. Cunningham I think we'll stop here for today and we'll pick up here next time.

CUNNINGHAM: Okay.

[Total Running Time: 02:26:57]

**END OF INTERVIEW TWO**

### BEGINNING OF INTERVIEW THREE

LAW: This is an oral history interview with Edward Cunningham. We are in his law office here in Springfield, Illinois. Today's date is January the 21st, 2016. This is our third interview. We are going to continue to discuss his legal career. Mr. Cunningham, I thought today we would start with a discussion of some of the cases that you handled for the hospital that didn't necessarily go up on appeal. Could you kind of give me an idea of the flavor of that work, and what all that involved, and the kinds of cases and such?

CUNNINGHAM: When I got to Springfield, we really didn't have much medical hospital work. *Darling v. Charleston [Community Memorial Hospital]* was decided in the middle of the 1960s, and it started a string of cases imposing liability on the hospital when their rules and regulations were not followed.<sup>50</sup> It didn't hit Springfield until middle 70s. I had done a union representation case, which I think we talked about for the hospital, and Jack Cook and Russ Beckwith came to me and said that they didn't have any house counsel, and would I be willing to devote much of my time as outside counsel to representing the hospital, and I said I would. From then on, from 1975, 76 we developed a risk management program, which provided that we had a reserved fund covering the hospital's liability. The first few years we didn't have much liability, but we did a lot of work on regulations, new statutes, informed consent. I remember going to one doctor and saying, "No, Doc, you got to get informed consent." He said, "Why? I know what's better for the patient. Why should I tell the patient about what's going to happen?" So, that was the early attitude of some of the older physicians in town. [During late 1970, the Illinois

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<sup>50</sup> See, *Darling v. Charleston Community Memorial Hospital*, 33 Ill. 2d 326 (1965).

Legislature passed an updated mental health code revamping how mental patients were treated. I spent about six months aiding the hospital in adopting new procedures.]

So, we started working on those things, and then we started, as the hospital started getting sued on liability cases; and the first real major incident, we had some prior to this time, but the first major incident is what I would call the dialysis cases. The hospital had renovated their dialysis unit, and they didn't have a dedicated water line. The water line to the in-house dialysis went up to the air conditioning. Right before Labor Day, I forgot if it was 1980 or somewhere about there, on Friday morning about 6 a.m. I got a call from the risk manager saying, "We have got six comatose patients in the dialysis unit and we are re-dialyzing them." That caused a big stir. One of the patients died that day. The attending physician said that he died of his prior complications, heart issues, not of the dialysis occurrence. So, the hospital talked to the patient's family, and asked him if they wanted it reported to the Coroner. They said no. We didn't report it. Well, then Coroner [Norman] Richter got on his high horse, and the family over in Decatur started yelling and hollering. It ended up that the patients on the in-house dialysis unit, and this is all in the public record, were dialyzed, but had ethylene glycol from a reverse flow from the air conditioning system. All but one survived, but the Coroner had a big thing about not reporting it to him. He had held Coroner's inquest, and we went there and attended that. The heart doctor basically said he died of his heart condition, not of the dialysis treatment. So, a bunch of lawsuits were then filed by the six patients, and they were all settled and resolved. So, it ended that, but it showed to me how risky, not risky is the wrong word, how some very simple things when they go wrong at the hospital could cause a lot of injury or a lot of problems.

At this time also there was a doctrine that was being developed called apparent agency, and what happened, and what happens in apparent agency cases is that a patient will come to the hospital, and have a doctor assigned to him in the emergency room, and if something goes wrong, the hospital gets sued under the apparent agency theory. The patient did not choose the doctor. The hospital did, and therefore, the hospital should be responsible for any potential liability. Those cases started developing during the 80s. Along with that Memorial and St. John's started -- well, back up a bit. In late 1960s, early 70s S.I.U. School of Medicine came to town. The residents would work under the authority of the treating physician. The issue there became one again of who is responsible for the resident. The residents were hired fifty percent by St. John's, fifty percent by Memorial. So, if a hired resident by St. John's was working in the residency program over at Memorial, Memorial would pick up the liability. So, that's the secondary or third area where liability was imposed upon the hospital for the acts of the residents. Almost all of these cases that I was involved in involved residents for the most part. Some of them, a few didn't, but most of them did.

One of the cases that stood out; Memorial has a burn unit. In dividing up with the school Memorial got the burn unit. St. John's got the neonatal unit. We had a couple nasty cases from the burn unit. These were cases where a resident was involved for the most part. One of them was a resident that was on duty, and the patient had seven percent burns. Only three percent were third degree. The question was should he have been in the hospital to begin with, but he was in the hospital. He was a little bit of a roughhouse guy, thirty, thirty-seven years old or so. His wife would come in. He would sit on the floor, and smoke cigarettes, not abide by the rules that a burn unit had, and he

got infected. Then he developed septicemia, which is a blood borne infection. He started showing signs of this on the weekend. The nurse said to the resident, "Please, don't you think we should call the attending physician." The resident went in and talked to him and said, "No, he sounded okay, he sounded good." She did that a couple times over the weekend. The attending came in on Monday and looked at the patient and just about flipped out. The patient, had blood pressure of something like seventy-five over fifty, and was in bad shape. He debrided him. The patient died in the course of the treatment, the debriding, of septicemia. Well, a lawsuit was obviously filed on it. It turned out that we were lucky in that we found out that he had set the fire that had burned his leg, and that his wife had gotten remarried. So, we were able to settle it at a fairly reasonable price. We had a couple other burn unit cases.

Then we had a number of medical staff issues. One of them was Dr. Lapidot. Abraham Lapidot came to Memorial from the East Coast. He was a pretty abrasive type of physician. He was an ear, nose, and throat doctor. He was -- as the rules provided he was on a preceptorship for his first year with a physician being his, ear, nose, and throat doctor being his preceptor. Well, Lapidot didn't like anyone telling him what to do or suggesting things. He and the preceptor got into it a number of times, and the preceptor filed charges against him indicating that he thought that he should be banned from the practice at Memorial. There were really sort of minor things in some ways, failure to take an x-ray, couple other things. The major one was doing a second head and neck surgery for a lady that had cancer. He had already done one. The preceptor said, "Don't do it." Lapidot went to New York, got a head neck specialist said, "Do it," and he went ahead and did it. So, that caused the preceptor to be a little bit annoyed. He filed charges.

There was a lengthy hearing. We weren't involved in the original hearing. Then he was bounced from the hospital. During the hearing it turned up that someone asked him about his prior experiences in Long Island, and he hadn't represented, or he had signed his request for privileges saying that he had never been bounced from a hospital. Well, factually perhaps he was right. They told him they were going to bounce him, and he resigned. Anyway that came out, and so the hearing committee voted to revoke his privileges, and then he sued. If I remember right, he sued not only his preceptor, he sued the credentials committee, and he sued I think it was the Board of Directors in the federal court. Well, we bounced it from the federal court and he sued in the state court. It went up after a very contentious hearing [on summary judgment on the basis that he lied on his application] or depositions in which he made all sorts of statements about prejudice and et cetera.<sup>51</sup> The Court upheld on a motion for summary judgment the actions taken by the credentials committee, and he was suspended by the hospital. I think he filed a petition for leave to appeal, but it was not granted. The ironic thing about the case is that the credentials -- well, when he came to Springfield, he joined the Springfield Clinic. On the credentials committee there

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were three or so members of the Springfield Clinic. The Springfield Clinic had reviewed his past work, and knew that he had been suspended in Long Island, but did not bring it up to the hospital. So, we were trying to avoid that issue during the course of the hearing because there was a concern that there might have been waiver. Anyway there wasn't, and he was suspended, and the suspension was upheld. He continued to practice at St. John's,

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<sup>51</sup> See, *Lapidot v. Memorial Medical Center*, 144 Ill. App. 3d 141 (4<sup>th</sup> Dist. App. Court, 1986).

and then I don't know what happened. He ended up leaving and going to Israel.

LAW: Did you want to talk about any other ones? How about the HIV cases?

CUNNINGHAM: In the 1990s or about then, AIDS became the big issue in the community and in the country. There was no blood test for AIDS or for the virus in the blood. The blood bank in Springfield was sued along with the hospital on several cases on the grounds that bad blood was given to a patient or a couple patients, a number of patients. They contracted AIDS as a result. A couple of them died. The theory behind this was that there should have been surrogate testing for the hepatitis virus because frequently if you have as I understand it AIDS, you could also have hepatitis. Since we didn't do the hepatitis testing they sued us, sued Memorial, and sued the blood bank for failure to make sure there is a safe supply of blood. Most of these I think were dismissed eventually after many, many depositions and hearings. Some of which were taken out in California because that was the hot bed of this AIDS epidemic at that time.

So, then we had the failure to do this or failure to do that at the hospital. One of them was a patient that was given Heparin, and the Heparin level wasn't tested, and as a result he had a bleed and subsequently died. We went out to Massachusetts and took a deposition of an expert, and eventually we got that one settled rather cheaply. There were some other cases like that. I don't know if I mentioned in the case, in the letter to you, but those were the types of cases we would have.

At one point in time I think there were probably twenty-five or thirty cases. These were mainly either because of some misstep by the resident or some physician, credentialed physician made a mistake, and they were, the hospital was being sued on the apparent agency theory, [making the hospital liable under the theory of joint and several

liability], I recommended to the hospital when they were sued on the apparent agency theory that they would file a cross suit against the physician involved, and with all but one exception they refused to do so because there was – they didn't want to anger the physicians because they were dependent upon them for the patients. The reason I did so was somewhere in the 1980s St. John's got sued for a, in a case, where the resident gave a pregnant lady Marcaine, and the child developed a, some sort of problem and delivered, and if I remember right the drug company was sued. [The resident ordering the Marcaine was sued.] St. John's was sued. St. John's did not want to sue [the drug company or doctor on a cross claim], and there are legitimate strategy reasons for this. You don't want to sue the doctor and have the doctor testify against you, or you testify against the doctor, because it makes it easier for the plaintiff, the plaintiff just sits back and says okay, you guys fight it out and tell me who should pay me. So, there was a legitimate reason for not doing so. But anyway it was a St. John's case. St. John's was found -- it was a ten million dollar verdict, which is probably the largest verdict in Springfield at that time. St. John's was found to be seven percent liable. The drug company, because it didn't warn of possible side effects of this Marcaine, was ninety-three percent liable. Right before the trial began St. John's said we better file a cross claim. Judge Cadigan was the judge and it was objected to because it wasn't timely. He granted the motion to, not to allow it. So, the case went to trial. St. John's as I said was seven percent liable; the drug company ninety-three percent liable. The drug company settled for a couple million dollars, and the St. John's had to pick up the rest of the verdict. That started me trying to make sure the hospitals are well aware of those risks that were involved, and so I always did recommend if they wanted to do so that they file a cross claim realizing that that may

cause those physicians to fight with each other and fight with the hospital as to who had the liability. I agreed it wasn't a good idea, but I feel I needed to make them aware of that issue.<sup>52</sup> [Subsequently the insurance carrier for St. John's sued the attorneys representing St. Johns and the resident. I acted as an expert witness on behalf of them on that suit.]

Anyway I was on the risk management committee for oh, probably thirty years where we discussed these cases and decided upon the merits and whether to try and resolve it. Very few hospital cases actually went to trial. A number of them were resolved on motions for summary judgment where you get expert testimony to come in and say, "No, they followed the standards of care." Sometimes the physicians would get out. Sometimes they wouldn't. Only two or three, four cases that I am aware of actually went to trial in that period of time. I also had -- some others, but the dialysis and the AIDS cases I thought were some of the most interesting ones.

LAW: Well, you mentioned several. I don't know if we need to go through all of them, but you did mention the -- well, there was one involving a radiologist and the films.

CUNNINGHAM: This was -- I don't know if you're, if that's the case that you are referring to, but there was a patient that came in with a blockage of the artery feeding the kidney. The vascular surgeons at the School of Medicine wanted to increase the procedures that they were credentialed for. The physicians are credentialed for certain procedures, and the vascular surgeons weren't credentialed for doing these procedures on the renal artery. So, they had a big review of this, and the hospital decided that the vascular surgeons should be able to do these procedures. So, a patient came in with a blocked renal artery. A resident, who was a very competent physician, and an S.I.U. physician, who had lots of problems, emotional problems, did the procedure. The

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<sup>52</sup> See, *Henry v. St. John's Hospital*, 13 Ill. 2d 533 (1990).

surgeon, S.I.U. surgeon, had never done the procedure before [yet he was preceptor to the resident]. The wire punctured the renal artery, and the patient bled to death. The doctor, the resident doctor was doing the procedure under the supervision of this surgeon from S.I.U. He was a competent resident, and somehow the artery got ruptured, and we don't know quite how, but the patient died – and a big lawsuit. I got a little bit in trouble because I said to the court we didn't have the films of the procedure. [The film had disappeared from the hospital.] We searched the hospital, and the hospital said they didn't have them. The plaintiff's attorney found out that these procedures by the vascular surgeons were being reviewed by the Radiology Department. The radiologist involved had a copy of the film, and the film clearly showed the renal artery being punctured. At that time the liability shifted to the S.I.U. surgeon. He incidentally was not on the staff anymore at the hospital or at the school, and was out in Seattle, Washington, and not practicing medicine. [He happened to have a drug problem.]

LAW: There is also the MS case, the one case involving the lady with multiple sclerosis.

CUNNINGHAM: That is another very difficult case. The lady came in and was treated by a neurologist and diagnosed with multiple sclerosis. She developed a severe headache while in the hospital. She had a psychiatric condition and was given Parnate for it, and had been treated for this condition for a period of time [prior to her hospitalization]. The attending physician was busy when the nurses called because of this severe headache. The resident involved was --had [never] treated the patient before, but was called on the spot to treat the headache. He gave her Demerol. Demerol is contraindicated with Parnate. She developed a bleed [in the cranium].

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She either had a bleed when this headache was starting, or developed a bleed and given the Parnate. Whatever it was the Parnate made it worse. So, the resident got sued. The attending physician got sued. The resident became the target because the attending physician [and another physician testified, against the resident.] The lady ended up being wheelchair bound, almost all of her care provided from feeding her to bathing her by a state agency. So, it was a significant and serious case. I always thought the attending physician bore some responsibility too, but the way it turned out it was the resident only, and-- as the hospital had this risk management retention, [which would not cover the risk in my opinion] and we referred it to the excess carrier because of the seriousness of the injuries. She was forty years old, and could not take care of herself, and had a normal life expectancy. We got it settled, but it was probably the most serious case that I had. Death cases as harsh as it may seem have a limited period of time for which you have liability, but when people have full life expectancies and are fairly young and have a severe disability for the rest of their life, it can be a barn burner.

The last case that I had for the hospital was one called *Watson vs. Gallina*, and this illustrates the apparent agency concept.<sup>53</sup> Gallina was driving his car near Carlinville, and it was a I think it was a Sunday, high speed over these up and down hills around Carlinville. We have questions as to why he was in Carlinville, or in that area, but he came over this hill, and there was an older gentleman and his wife that were in front of him in the same lane, and they were turning. He couldn't stop in time, and ran into them, and got pitched from the car, had multiple injuries, in fact, was pretty close to dying. He had injuries to his kidneys, broken legs, fractured jaw, broken hand, broken leg, and the ambulance came, took him to the hospital, Memorial. They called up the

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<sup>53</sup> See, *Gallina v. Watson*, 354 Ill. App. 3d 515 (4<sup>th</sup> Dist. App. Court, 2004).

physician on call, which was an orthopedic surgeon on call. They have – their emergency room is always staffed, but they come in and treat him and stop, try to prevent the immediate problem, and then they call in the specialist. Watson was called as a specialist [an orthopedic surgeon], and he and plastic surgeons and a group of other physicians provided services to Mr. Gallina. Watson decided not to cast, this ankle that was broken. Instead he wrapped it, and he made the decision because Gallina had been in the operating room for probably eleven hours, [with his other injuries] and each hour that you, where time goes on you have more and more risk of problems with anesthesia. So, he decided that he would not cast this break in the foot and the ankle. It healed, but it didn't heal as well as Mr. Gallina would have liked it to have. So, he sued Watson, and he sued the hospital because we were the ones that chose Dr. Watson. This is the apparent agency theory. The hospital doctors called up the orthopedic surgeon on call, and Watson came in and noted, in his notes, this is a certain type of break, but didn't treat it like another doctor would have treated that type of break. The reason he didn't treat it was that he didn't want to keep him under anesthetic anymore for fear that he might have a reaction and might die. So, anyway he got sued, and the hospital got sued. We had a trial. My argument was sure, maybe something went wrong, but we saved the guy's life. He was, as all the testimony showed, was near death. His blood pressure was way down. He was barely breathing. We saved his life. Sure, perhaps didn't come out as whole, but what do you expect he was in a severe wreck, [his fault.] The jury found not guilty for Watson and for ourselves, and it went up on appeal, and it was reversed because the doctor had testified that it was a Talo one or Talo two breach. That's T-A-L-O, and for that the standards were that you cast the foot and the ankle. The reason for not doing so

was because that would take more time, and the risk of doing that when he was in this compromised condition was severe. But anyway it went back to the trial court, and-- we had prior to that time indicated to Gallina's, no, not to Gallina, to the SIU or to Watson's attorneys saying, insurance carrier that we wouldn't file a cross claim against him if they would pick up the liability. It came back and was compromised and settled at a very reasonable amount with the hospital having to pay nothing because of this agreement. That was the last case that I handled for the hospital.

LAW: Mr. Cunningham, you talked about it just very briefly last time, but I wanted to give you the opportunity to talk about the Illinois Hospital [Attorney] Association and your role in helping to create it.

CUNNINGHAM: That was, that primarily came from the Illinois Hospital Association. They thought that they needed an Illinois Hospital Attorney Association because in this period of time, the 60s in Chicago, perhaps the late 60s in Springfield, the liability of hospitals was increasing. The complexity of the issues were increasing. So, a group of us mainly from Chicago, they called upon me because they knew I was active in that area, and we formed this Illinois Hospital Attorneys Association, and had annual meetings where we would have educational courses throughout the year. I am not a member anymore, but for about fifteen years I was a member, twenty years. We discussed the various hot issues that were occurring from the regulations, to emergency room care, to liability cases, and things like that. I found it very helpful. There is also a country wide association of hospital attorneys, and I was on that from the early 70s through perhaps '95. Had nice benefits because they always had meetings in California, Colorado, Massachusetts, annual meetings for a week discussing trends and liabilities.

LAW: Okay, let's talk about some more of your appellate cases. I thought we would start with the *Scheller vs. Health Care Service Corporation*.<sup>54</sup> Any memories of that one?

CUNNINGHAM: Yes, I remember that one. Shirley Scheller was a long time employee of Health Care Corporation, which is really Blue Cross-Blue Shield. So, I will use that as the term. Health care insurance was changing fairly radically, and they brought down from Chicago an individual, I think his name was Santi, S-A-N-T-I, who was a bit of a hard-nosed guy, and put him above Shirley Scheller, who was the plaintiff in the case. He put more and more pressure on her to do the job, or do a job, and put more and more duties on her, and wasn't a guy that was very warm or feely, but was very critical of everyone and everything. [She questioned none of his cost cutting measures, thinking that they component patient care.] Shirley Scheller pretty much collapsed, had a nervous breakdown, and resigned. Tom Londrigan sued Blue Cross-Blue Shield under the tort of retaliatory discharge [alleging that she was constructively discharged.] These cases were under what we call *Kelsay vs. Motorola* where you can't discharge someone [when it is against public policy].<sup>55</sup> For instance, I had a case where a friend of mine was working for the Department of Public Aid, and he was contacted by the Attorney General to investigate allegations of payoffs and corruption in the department. So, he agreed to help them. He is an ex-Army CIA type, and he collected materials and information to show payoffs that were involved. The Director found out about that, and said, "He should have come to me," and the answer to that was the Attorney General didn't know how far the involvement went. Anyway he got canned. I urged that this was contrary to public policy. He was investigating at the behest of the Attorney General potential criminal

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<sup>54</sup> See, *Scheller v. Health Care Service Corporation*, 138 Ill. App. 3d 219 (4<sup>th</sup> Dist. App. Court, 1985).

<sup>55</sup> See, *Kelsay v. Motorola*, 74 Ill. 2d 172 (1978).

conduct in the Department of Public Aid. He got his job back. We had a grievance hearing, and they gave him his job back. So, that was what Scheller was based upon. “Hey, this was against public policy. They were trying to make her do things that she didn't think were right, and as a result of that she quit.” [The plaintiff claimed constructive discharge.] Well, we defended on the basis that there was no clearly defined public policy [involved, the case did not extend to constructive discharge,] and that Illinois, is an employment at will state and unless there is a clearly defined public policy

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they can hire you or fire you as they see fit. [We were successful.]

We had another case involving Sears where a lady, where a supervisor was fired, and he alleged that he shouldn't have been terminated. He was a direct supervisor of the, of a lady that he was -- well, was having an affair with, let's put it that way. The policy of Sears was that you can't be involved with someone who is under your supervision, and they fired him. He sued, and the termination was upheld obviously. Anyway those were hot issues in the late 70s, early 80s.

LAW: Now, another case you had, now this seems kind of different from the other ones

we've talked about is this *Demeter, Incorporated* –

CUNNINGHAM: Yes.

LAW: -- vs. the –

CUNNINGHAM: This was –

LAW: -- *Department of Ag Director*?<sup>56</sup>

CUNNINGHAM: Yes, we had -- the company that was involved was, I think Cargill was it?

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<sup>56</sup> See, *Demeter, Inc. v. Werries*, 676 F. Supp. 882 (Central District of Illinois, 1988).

LAW: That was one of them, but there are several.

CUNNINGHAM: We also had Bunge Corporation, and this was a group of grain elevators that were licensed under the Federal Warehouse Act, and the statute which passed by the Illinois Legislature saying that we could regulate you too, tax you. The storage elevators didn't like that. So, they sued, and Judge Mills said, "Yes, it is federally preempted by the federal statute." And we were successful.

While we are talking about that, there was a case down in Cairo, it didn't go up on appeal, but Bunge, had a big grain processing plant down there, and they were polluting the neighborhood. The cars would end up with silt on them from the processing procedures. They were complaining to the EPA, and the EPA said we needed scrubbers, which we put in. Well, then they wanted to fine us \$500, \$600,000 for our doing this. So, we went to a hearing, and ended up that we had to pay them about \$25,000. It was an interesting area. I don't know if you have ever been down to Cairo, but it is really a pretty depressed area. We went through a hearing. I think it was with the EPA, and finally came up with a rather minimal fine.

LAW: Then there is also this Wal-Mart case.<sup>57</sup>

CUNNINGHAM: We had a series of Wal-Mart cases. Probably won't talk about all of them, I don't want to, but there are a couple that came to mind. I don't know if you have them in your list or not. Wal-Mart was a very difficult client. They called us vendors. We were -- if you sold tires, you were a vendor. If you sold them clothes, you were a vendor of these. So, we as attorneys don't like to be called vendors very much. They treated us as they would their tire suppliers. So, we had one case that I think was interesting. They changed the tires on a truck, and fifty miles later a tire came off, and

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<sup>57</sup> See, *Bangert v. Wal-Mart Stores, Inc.*, 295 Ill. App. 3d 418 (5<sup>th</sup> Dist. App. Court, 1998).

they had an accident. Bentonville referred it up here. I said, "Where is your file on it?" "We don't have a file on it. We don't know anything about it." The tire and auto supervisor had left and gone on. So, we were shooting blind. So, I started investigating it. I found the guy that was the tire supervisor. He said, "Oh, yeah, we have a file," and he had about a fifty page file on the accident that they had not supplied to us, which basically showed that the tire had come off as a result of it not being-- it was apparently a chrome tire on a metal, on the steel frame or something like that, but anyway it had come off. The thing that bothered me most of all about that is that they said they didn't even have a file. This was pretty much consistent with what their policies were. A suit comes in to Bentonville. They send it out to an attorney. They don't really want to look into it and find out what happened. They leave it up to us, and then they were chiseling you on fees. So, as I said we were treated as vendors. We had about thirty, thirty-five of these cases, and finally we decided that it wasn't worthwhile, that there was too much -- well, when they weren't cooperating with us and helping us find out what happened in these cases, there were mainly things like the tire case, and they changed the oil in the car, and the car leaked oil and the engine blew up, slip, trip and falls in the store, the store parking lot, that type of thing; and mostly they would say, "Okay, go find out what happened yourself at the store," which sometimes we could, and sometimes we couldn't find out what happened. Sometimes -- they were always questioning us on what we were doing on bills, and they didn't like to settle cases. So, you would -- most of the cases you had a hard time getting them resolved if you thought there was liability. My career with Wal-Mart spanned about ten years, and was thankful that it was ended. We represented Wal-Mart from north of Peoria down to southern Illinois, which I thought was a little

ridiculous. We had a slip, trip, and fall, for instance, in someplace in southern Illinois, and they wouldn't use a lawyer down there. They would use us. [They would quibble about the bills and the time, insist that we remove cases to the federal courts even if the jurisdictional amount was not met. I refused for the most part to remove this.] When we quit, they asked us to refer their open cases up to a Chicago law firm to handle the cases down here, but it was a troublesome relationship. The people referring the cases from Bentonville were generally paralegals. Their job was to refer the cases, and once they referred them, they washed their hands of it.

LAW: Then there is the airplane case in Quincy?<sup>58</sup>

CUNNINGHAM: Yes. That was probably my last major case.

LAW: Very contentious, very contentious?

CUNNINGHAM: Yes, it was. It started with our client was a retired TWA pilot, and he had a [Beech] King Air aircraft, which is a twin engine, very nice Beech craft. He was training a young lady to have her certified in this King Air. And so he took her from down in the Alton area, and had her fly him around, instructing her as she was doing that. They landed at Quincy, which is a, what they call non-towered airport. And then after getting gassed up and that they went to the runway to take off, and they announced that they were taking off. At the same time they announced that, there was a United Express that was landing, and the United Express announced that they were landing on the runway, but they were landing on an intersecting runway. There was an airplane behind us that answered that, "We are holding," to the response of, to the request of United. We didn't

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<sup>58</sup> See, *Reliance National Insurance Company v. Great Lakes Aviation, Ltd.*, 12 F. Supp. 2d 854 (Central District of Illinois, 1998), *Johnson v. United Airlines et al.*, 203 Ill. 2d 121 (2003), *Reliance National Insurance Company v. Great Lakes Aviation, Ltd.*, 340 F. Supp. 2d (Central District of Illinois, 2004), and *Reliance National Insurance Company v. Great Lakes Aviation, Ltd.*, 430 F. 3d 412 (7<sup>th</sup> Circ. 2005).

answer, and the question is why we didn't answer. They saw us on the ground, and they probably thought it was us answering them. But anyway we took off, started the take off roll as they were landing, and the planes collided on the intersecting runways. Fourteen people burned to death. The United had several issues that in my mind which were, could possibly put them at fault. One was that they were landing on an intersecting runway, which was not favored by the wind. Second, they knew there were two planes down there. They only heard a response from one plane. Our liability was they said, "Hey, what are you doing down there?" An answer came back, "We are holding." Then the collision occurred, and Raytheon, the maker of the airplane, the King Air, ourselves, and United -- originally Quincy were sued. Quincy [and Raytheon] got out. Quincy was being sued on the grounds that they didn't have a radar there. Raytheon got out because they weren't the proximate cause of the accident. That left the passenger suing us and United. As United was a common carrier they had a higher duty of care for their passengers. They settled the case for somewhere around fifty-two million dollars, and we continued to sue United for the death of our pilot. It ended we lost. The copilot did not lose-- the pilot which we were, had the responsibility for the plane. The learner copilot was just a learner copilot. We did not collect anything. The copilot I think had a six million dollar verdict against United. They were --they divided up the liabilities. You take a percentage of what your percentage of liability was, or as I guess the verdict. So, she didn't get that much, but they found that we were fifty-five percent liable or something like that. She was twenty-five percent liable. United was liable on the rest. You divide up the liability. If your liability is over fifty percent, if United was over fifty percent instead of twenty-five or whatever it was, they would have had to pay us, but they

didn't. At twenty-five percent they did not have to pay. The case had gone up on appeal on a number of different issues. We had gone out to Washington D. C. and deposed, and that's the Transportation Safety Board representatives that found us to be at fault,

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and they stuck with that story. We found that -- after the fact we found that we had only one working head phone. So, when we were instructing -- when our pilot, client was instructing the copilot, he would have to take off his head phone because of the noise, engine noise. Subjective thought is he didn't hear United coming in. That's how the collision occurred. On the other hand, United didn't hear from us but heard from the plane behind us. So, that excused them from their negligence. That was one of the hardest cases for me to handle because of the amount of trauma that occurred. Some of the passengers' wives had seen psychiatrists and were writing reports, the psychiatrists, while they were talking to the husband, waking up dreaming of their husband, and it was really sort of a heart-rendering situation.

LAW: Okay, Mr. Cunningham, I thought I would ask you some philosophical questions.

Well actually before I get to that let's talk about a couple other things. We have talked about your legal career, all these different cases that you have been involved in. You have been a lawyer for some time. So, how has legal work changed over time over these last fifty years?

CUNNINGHAM: I will start with the first case I had down here. I was asked to prepare a brief for this one case that was on appeal, and I brought the secretary in. I started dictating to her. I pulled out, during the night, I pulled out the cases and marked them in the books, and called her in, started dictating the brief to her, quote the case, closed the books, put it

back in the bookshelf, and about midway through this process she looked at me rather quizzically. "Mr. Cunningham, I don't take dictation." Sort of teed me off. I had to start from anew. But that sort of illustrates where we were. We didn't have a lot of dictaphone machines around. We had some dictaphones that had these plastic tapes that go around. We didn't have computers. Another story is that you had these typewriters with carriages that would rotate, and we had one secretary in the office if she didn't like you, and you would be walking by her, she would push the carriage so it would hit you in the hip. So, anyway there was typewriters, white-out, carbon paper. Incidentally I went to Staples trying to get carbon paper about a year ago, and they said, "What is it?" So, things have changed from that point of view. The major change has -- well, there are lot of changes, but I think the major shift in the practice has been from being what I call a profession to now a profession/business. I don't remember being, initially being all about hours and dollars, but now it seems to have changed that there is a much more monetary inclination in the practice of law, much more monetary need or perhaps a monetary underline in the practice.

LAW: Why do you think that is?

CUNNINGHAM: I think all our society has gone pretty monetary. I remember billing and not getting paid back when we would say, "So what?" You would try and settle for a chicken or two. It really was not quite that bad, but people couldn't afford it. Now the prices have gone up. When I came down here, the hourly rate was oh, probably \$35 an hour. Now it is probably \$250 an hour. Not a lot of people can afford lawyers at that rate. Yet we all seem to be busy. The law firms seem to be busy. The other thing that

has happened, the law firms and the practice of law has grown exponentially. When I came down here, we probably had about eight lawyers. We now have about, thirty, thirty-two, thirty-three, I don't know.

LAW: How has this particular firm changed?

CUNNINGHAM: It has changed, and the computers have changed, and you do your –

LAW: What about types of cases?

CUNNINGHAM: Types of cases?

LAW: Has that changed at all?

CUNNINGHAM: Yes, it has, and it hasn't in a way. Harvey [B. Stephens] would probably be able to tell you more about that, but my perception is that we are probably doing a lot more school law and other business law. When I originally came down here, it was more real estate and probate, occasional other stuff, occasional lawsuit, but not the plethora of lawsuits that we now have. Matrimonial suits have grown. Dissolution they call them now instead of divorces, have grown exponentially. I would handle an occasional matrimonial suit down here when I first started. Now we have two to three lawyers handling that almost exclusively. Banking law has changed in that we did represent the First National, and we were the exclusive attorneys for them doing in-house stuff and doing their litigation, foreclosures, and that. Now the banks have all merged, and they have their own legal department. So, when it comes to getting outside counsel, you get the litigation type of issues, hence occasionally regulatory, but the regulatory is usually handled by the in-house now. The hospital work has changed dramatically at least for us in that instead of not having any in-house counsel, they have at least two, maybe more now. [I had served on the Risk Management Committee, the Quality Control Committee,

the Inspection Control Committee and the other committees of the hospital. Now they have in house counsel on those committees.] The whole area of complexity of issues has changed. One of the things that I thought was interesting I went over and checked in the library how many lawyers there were in Springfield in 1960. I didn't count the number up, but there is about a page in the yellow pages, and I looked at it today, and the yellow pages here there were twenty-five pages of attorneys listed in the yellow pages.

LAW: So, how has the local bar changed then over time?

CUNNINGHAM: I don't know that it really has. While I was practicing and others of my age the Illinois Bar Association and the Supreme Court started imposing mandatory legal education requirements. And that has changed, and I think for the good.

LAW: Nothing for the good?

CUNNINGHAM: For the good, for the good. It keeps -- I would love going to these courses. Now we have it on our computers for Westlaw and that, Westlaw legal ed, and I don't think it is nearly as effective, because you work it on your computer, and you turn it on, get the course, perhaps listen to it, perhaps go somewhere else and do your work, and it says ding if you have been listening, you push ding, and then you go do some more of your work. And it says ding again, so you push ding. And you might not even be listening to it. So, I think it has become a little bit of a hoax when you put it on the computer like that. It is not -- originally it was going to all of these courses put on by IICLE, or for instance, the Association of Hospital Attorneys, and I went to those for twenty, twenty-five years, and enjoyed them, and thought I learned quite a bit. Now, it has changed, so the computerized stuff, and I suppose if you are conscientious about it

and doing it, it probably works, but I would bet that fifty percent of the people are not. So, anyway that's my criticism of that area.

Then the other thing that's really changed really remarkably is advertising. We didn't dare advertise before. That was unethical. Now you have, and it started with, I think it was *Maricopa vs. Arizona* in the 70s, didn't hit here until about fifteen, twenty years later.<sup>59</sup> You have advertisements on TV. You have advertisements in the yellow pages. You have advertisements on some of the covers of the telephone books.

LAW: What is your -- why do you have a problem with the advertising?

CUNNINGHAM: I think it leads to less professionalism. Some of these ads are a little bit, sort of bragging ads. "Look at me, how good I am." I think it can be misleading. There is an between balance I would say between trying to make people know the services that are available, and this rampant advertising now that we have where, look at me, look at all of these earnings I have received, look at this, look at that. Early on it was pretty much word of mouth type of thing, maybe calling the Bar Association. And I don't know how effective these ads are in the newspapers either or in the yellow pages [or on the billboards]. But recently I have been seeing an ad on TV when you watch the news, Mesothelioma-- I don't know how to pronounce the word, and I will see another one, "Call me, I am standing by," and they have all these good looking secretaries with the telephones very busy. I think that's over the top. If it is someone advertising saying, "Hey, I do this type of work, I have a certain type of rating, I have certain type of specialization," I don't have any problem with that. But when they, when we are becoming so commercialized that we advertise my tire works better than your tire, I have some questions about how the profession has changed.

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<sup>59</sup> See, *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

LAW: Is there still the level of camaraderie that there was fifty years ago?

CUNNINGHAM: With the people that I deal with, yes. We always had people that were fairly obnoxious in the practice, but most, they were very few. We had one that I remember, was in a good law firm here in Springfield. I had a foreclosure case for the bank, and they -- I guess I had a mechanic's lien question on a foreclosure case, and he defaulted me on our mechanic's lien two days before I had to make my response. So, I went to the judge. I had my answer. I went to the judge on the day it was due, and said, "Judge, look at this," but I never heard of that happening where they tried to default you

[01:15]

before the answer was due. If someone was due on an answer to a complaint or something in my particular situation where I was representing them, I would call them up, and say, "Hey, are you going to answer this?" I don't know that that goes on anymore. I don't think I ever defaulted anyone in all my life that was represented by an attorney.

LAW: Any other changes that we need to make note of?

CUNNINGHAM: Litigation.

LAW: Yes, how has trial work changed over time?

CUNNINGHAM: It has gotten more and more complex. It isn't any more the car accident, at least in the cases that I was involved in. I can't remember a case now where I haven't had an expert testify. I guess I am primarily referring to medical malpractice cases, but in the airplane case there were I bet fifteen experts that testified. The litigation is more complex in that the discovery is more ongoing, and you take more and more depositions of people in these cases. In that airplane crash case I bet we had fifty to sixty depositions. Class

actions huge numbers on the verdicts. Financial manipulations, these are all areas where seemingly they are involved in really big dollars. The size of the law firms, which I mentioned, but in Chicago when I was there, a good size law firm was a hundred lawyers. Now they have them of several thousand. A thousand in Chicago and thousand scattered throughout the country. The Chicago lawyers usually would refer down here cases that would be litigated here thinking rightfully or wrongfully that there might be a prejudice to out of county attorneys. Now they come down here and handle it themselves. Specialization, I handled a wide variety of cases, but now as it currently is I think there would be referral to the people that specialize in those areas.

LAW: When do you think that started to occur?

CUNNINGHAM: When did that, probably in the mid 80s, late 80s. For instance, I would handle some bankruptcy cases early on, and now I wouldn't touch it with a ten foot pole.

LAW: Why is that?

CUNNINGHAM: I don't feel that I have -- I think it is too specialized now. Whether it is or isn't, I don't know. Antitrust, I handled a couple of those. I wouldn't now. So, anyway that's basically the way I see this going through bigger, bigger law firms, more and more pricey practice of law, more and more specialization, more of a business orientation than a professional orientation. I think that's probably true as I said in most professions. Medical professions that's true.

LAW: What about the local judiciary?

CUNNINGHAM: I am not in contact with the local right now because with my hearing and that I probably gave up trying lawsuits maybe ten years ago.

LAW: Okay, but even then you saw about forty years or so.

CUNNINGHAM: Oh, yes. I had a good relationship with most of them, mainly it was trial judges because I was Appellate Clerk for Sam Smith. I got to know Mills, and Craven, and Trapp, and Verticchio, and I liked them. They were good guys. I thought they were straight shooters, but I never had a political case with them.

I did have one political case. Did I mention that I represented George Wallace when he tried to get on the ballot? That was in 1968. One of the more conservative, right wing members of the firm came down and asked me if I could help him get on the ballot. And so people from one of the, Alabama or Arkansas, I forget which, would come in here, and we would look at the petitions, circulate the petitions, and filed them with the Secretary of State Howlett.<sup>60</sup>

LAW: Now, if this was '68, wouldn't that have been Powell?

CUNNINGHAM: Wouldn't that have been what?

LAW: Wouldn't that have been Paul Powell?

CUNNINGHAM: No, it was Howlett that I remember in the thing. I don't know when Paul Powell died.

LAW: 1970.

CUNNINGHAM: Did he? Then it could have been later than that, but it was Howlett that was the Secretary of State at that time. We had a meeting where this group would decide whether or not the ballots or the petitions merited putting the person on the ballot. I remember sitting there when ours came up, and it was quiet for about oh, a minute or two, and no one wanted to make the motion to put Wallace on the ballot. So, finally Howlett said, "Oh, hell, I will do it." He made the motion, got it seconded, and he was on the ballot. But it was kind of funny because no one really wanted to be sort of the one

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<sup>60</sup> Michael Howlett served as Auditor of Public Accounts from 1961-1973, and as Secretary of State from 1973-77.

that was, voted to make a motion to put him on the ballot. That was my one excursion in the political arena.<sup>61</sup>

LAW: So, I guess what I am getting at has the local judiciary changed in any meaningful way, or is the caliber of the judges the same, or is it more political, anything that we need to take note of?

CUNNINGHAM: Say what?

LAW: Anything that we should take note of?

CUNNINGHAM: No, I talked a little bit about Conway, and he was one of a kind. I felt that I had a fair shake with almost everyone else. Sometimes they got a little bit contentious. Judge [Stuart] Shiffman was pretty contentious at times, but that's just his personality.<sup>62</sup> [I had a custody case with him which was contentious. He called attorneys up to the bench and told us, "I have a root canal this afternoon and you guys are making me look forward to it." ] I was thinking of other judges that I have practiced before. Cadigan was okay. Sometimes he was wrong, but he was okay. He called it as he saw it. You can't argue with that. I had [James] Londrigan was a judge, and I remember him telling me, "You know, the only thing you deserve to get from me is a ruling that can be appealed. I could be right. I could be wrong, and you could appeal or not."<sup>63</sup> So, I always felt that they were doing what they thought was right, not taking the political considerations into

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<sup>61</sup> Prior to the creation of the State Board of Elections in 1973, issues such as these were resolved by the State Electoral Board. The Board was made up of the Governor, Attorney General, Secretary of State, Auditor of Public Accounts, State Treasurer, and the Chairman of the State Central Committee for both parties.

<sup>62</sup> Judge Stuart Shiffman was an Associate Circuit Judge from 1983-2009.

<sup>63</sup> Judge James T. Londrigan was a Circuit Judge from 1977-81, and an Appellate Court Justice from 1981-82.

it. I was lucky in that regard. [I had some cases with Judge Jeanne Scott, both federal and state, where she was a Judge. I had a great deal of respect for her.]<sup>64</sup>

LAW: I have some philosophical questions for you. What are your thoughts on cameras in the courtroom, and how should the judiciary relate to the media?

CUNNINGHAM: Well, first on cameras I am an old-fashioned type. I don't like the idea of attorneys grandstanding before the cameras; and although I know it is a movement going throughout the country, and I am on the minority side of that. But I feel that anything that either intimidates a witness or that might cause a lawyer to play to the camera rather than to try and represent his client is wrong, and I think the cameras seem to foster that playing to the cameras and to witnesses who are intimidated anyway being put on the stand knowing that they are going to be on TV or something like that could be very intimidating and especially in cases involving something that's very sensitive.

LAW: Then how should the courts relate to the media?

CUNNINGHAM: They can come in and take notes and that as they have in the past.

LAW: How should the media relate to the courts?

CUNNINGHAM: I don't mind it if they want to interview people after they have testified or after this, after the trial. That's fine. I would have trouble with them interviewing judges.

LAW: As a lawyer what are the best means to enhance the public's awareness of the judiciary and what the judiciary does?

CUNNINGHAM: Run that by me again.

LAW: What's the best way to enhance the public's awareness of what the courts do?

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<sup>64</sup> Judge Jeanne Scott became an Associate Circuit Judge in 1979, was elected a Circuit Judge in 1988, and served in that position until 1998, when she was appointed a Federal District Judge. She retired in 2010.

CUNNINGHAM: Well, that's leading to this question of televising.

LAW: Maybe.

CUNNINGHAM: It is a question of balance. I think every reporter reports on the cases, reports what happens would be the way that I would go. I know there is a movement to get the TV in there, and perhaps the theory behind it is to educate the public on the courts, but I think the downside to me weighs more than the educational aspect of it. The courts obviously should be open, and they are open to the public, open to the media, no secret hearings. The tendency on TV as you are all watching these criminal trials on, mock trials on TV, you know, it just is too big of a temptation to try to act for the TV. That's my two bits anyway.

LAW: Are you a member of any bar associations, and what is the nature of the relationship between the bar associations and the courts?

CUNNINGHAM: I am a member of bar associations. I have been a member of the Illinois Bar Association primarily, Association of Trial Lawyers at times, the Association of Hospital Lawyers, Illinois and statewide, probably some others over the years, but I can't really remember. I have been fairly active in the Illinois Bar Association over the years.

LAW: What's the relationship between the Bar Association and the courts?

[01:30]

CUNNINGHAM: They do educate the lawyers. They do lobby for law changes, and do make recommendations. The Bar Association has assembly meetings where recommendations are made to change various statutes and perhaps civil practices, adopt or suggest adoptions of rule changes to the Supreme Court, and generally to oversee how things are

being litigated and handled to help make recommendations for change of procedures in the courts that they think are unjust or unfair, that type of thing.

LAW: What is the role of the courts in society and what is the role of a lawyer in society?

CUNNINGHAM: The courts are there, I guess you should ask a sociologist that question rather than me. The courts are there to enforce the statutes and the laws that have been adopted by the state legislators and federal government, federal representatives and senate. It is both criminal and civil and regulatory, and sets the rubric of our society, so the enforcement arm of civilization if I can say that.

LAW: And lawyers?

CUNNINGHAM: They are a part of that system. Lawyers do many different things, and I don't know what percentage of lawyers are in litigation, like I probably was, as opposed to attorneys that are interpreting laws, and regulations, and drafting documents. But the really the rubric of our society is making the contracts, and enforcing the contracts, and enforcing the laws, and making sure that people are treated fairly. Sometimes it works, and sometimes it doesn't.

LAW: What are the politics of the judiciary? How does one become a judge, and what are your memories of the political aspect of the judiciary?

CUNNINGHAM: That's beyond me how to become a judge. I know Wally Ackerman once asked me if I wanted to be a federal magistrate when he was a federal judge, and I thought about it for awhile, and thought I probably wouldn't have the experience needed for that. On the federal level it is political appointments. On the state level it is election and party endorsements. That's probably a bothersome thing to me.

LAW: Why so?

CUNNINGHAM: I don't want judges beholden to any party. I think the federal system is much better from that point of view in that they're lifetime appointments for the most part. Here I guess you run against your record, and if you don't get successful, you have to run against another candidate. The parties are very much involved in that. I remember down in Alton or that area, St. Clair County, the parties' lawyers were paying huge funds to the campaign chests of certain judges who they thought might favor, in this case a plaintiff's interest, and that's plain wrong. There should be limitations on that, and perhaps even making it so that the judges who get campaign contributions don't know where they come from.

LAW: What are the benefits of doing pro bono work, and have you been engaged in any of that or any other type of philanthropic work?

CUNNINGHAM: The benefits of that are obviously not monetary, but they are more psychiatric. I have done a little legal aid work, not a whole lot. I have done work for, been on committees, where they want lawyers, I guess that's pro bono work. To the extent that you do it, some people do it to get a client base. I probably didn't get any clients out of what I was doing as pro bono, was helping out with family law matters, with the Department of Child and Family Service, helping with the soccer program, things of that. I don't know if they are considered pro bono as such, but it is community activities. These are things that you do, at least I do because there is a reward in doing them themselves. I am doing pro bono work for a lady now that can't afford a lawyer, and she is very appreciative. So, the psychiatric satisfaction in the legal area is great.

LAW: Do you have any advice for our commission on how we can go about preserving the history of the courts?

CUNNINGHAM: Not other than reviewing cases that are, that seem contentious is the wrong word, but for instance people have reviewed the works of Abraham Lincoln in the courts. Reviewing the court decisions that are perhaps changing society and seeing how the courts have had an impact upon society from criminal, to civil, antitrust laws to -- are you talking about local courts, or are you talking about?

LAW: What I am getting at is what can we do as a commission to preserve the history of the courts?

CUNNINGHAM: Okay. Well, making sure the records are preserved, I guess.

LAW: Okay.

CUNNINGHAM: I have friends that went out and checked out Abraham Lincoln records, and they were able to find them. But somehow categorizing them so that they can be worked with. The other thing you mentioned the change is the amount of case law that's come out since I started practicing. It is just astronomical. It is hard to keep, hard to know how to put that together sort of cohesive record.

LAW: Mr. Cunningham, I wanted to be sure to take note of your writing. Would you like to discuss your writing, whether it is your book or your articles that you have written?

CUNNINGHAM: I haven't written a whole lot, but I find it is fun. The church that I belong to, the First Presbyterian Church, started in 2002 a mission to Cuba, and I was instrumental in getting that going. I wrote a couple articles on that, and in newspapers, and it is self rewarding because you see someone put you in print. I wrote a book on a trial here in town, and at first it was fun.<sup>65</sup> Then it became sort of a work love. Then it became very laborious, and I probably broke even on it, but not much, but it was interesting. The case was the Winger case as you are, or the –

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<sup>65</sup> See, Edward Cunningham, *The Perfect Patsy: The Winger Murders* (XLIBRIS Corp., 2013).

LAW: The Winger case?

CUNNINGHAM: The Winger case, and it was a, I was fascinated by it because here was a guy that was, no criminal record or nothing, working at a state job, very bright guy, married to a very attractive young lady, who worked in a hospital, just adopted a child, and then three months later he was, his wife was hammered to death by, allegedly by a van driver. They tried him and found him guilty, and I said how in the world can that be? No criminal record, lovely wife, just adopted a child. And so I got into it, and I'm convinced he was a psychopath. No one really knew about, and so it was interesting, and a bit of an eye opener that this guy could be functioning in society, and have friends. And I interviewed some of his friends who couldn't believe that he would have done that, but the evidence was overwhelming to me. So, anyway that and write a few articles for the newspaper. This Winger was scheming. He invited this van driver over, who had driven his wife from St. Louis to Springfield after she had gone to Florida. And he talked to her about smoking marijuana, about how death might be his future. All sorts of scary things to this little girl with this adopted baby in her arms. And she told her husband about it, and her husband invited him over to straighten him up; and then the husband shot and killed the van driver when he came over. The wife was home, and heard the noise, and ran into the kitchen; and he picked up a hammer, and hammered her to death, and called 911. The forensic evidence all lead to the conclusion that he had done this. It ended up that he had a girlfriend during this period of time. And he broke up with her, mistake number one. Two or three months after the murder. She had a nervous breakdown and cracked up. She went to -- got help, and she told the psychiatrist what he had said about this van driver coming in and shooting him.

[01:45]

He told her that, and that started the whole thing going, but here was a normal guy just adopted a baby, with a lovely wife, and a solid job, no criminal record, professional.

That just struck me as really unusual.

LAW: What's going on with this interest in Cuba?

CUNNINGHAM: When I went down there –

LAW: To visit or something?

CUNNINGHAM: In 2002 the church sent me down there on a mission.

LAW: All right.

CUNNINGHAM: It was -- the first meeting I went to, or first visit I went, this was with Chicago Leadership, Religious Leadership Council, and we met with executives in the Cuban government including the foreign minister, the Director of Cultural Affairs Schools, and met with the Director of the Medical School in Havana, and had a, what I call a really educational experience. But in connection with that we also were discussing the boycott that existed in our country, and no other country, of Cuba. Cuba rescinded their constitution saying you had to be an atheist country to agnostic. They weren't so aggressively posturing against us. We were the only country that had this economic boycott, and I just thought it was wrong. We met with some of the people. They are very poor. A good doctor earned \$30 a month. People were surviving on \$20 a month. The kids were all being educated. They had health care that was free for everyone. Their longevity was the same as ours or better, free education, very talented engineers, medical products that we didn't have, medical drugs that they had developed. I thought why in the world aren't we trying to relate to them? I guess I was a little bit ahead of my time,

and instead of pushing them off to the side, you make enemies -- you make friends by doing things with them, not by pushing them off and refusing to do things. I think they will come around. It is an interesting society. I think I made three visits there, and there has been a noticeable change since the first visit in that there is more free enterprise now. There are restaurants in the homes. There are farmers markets where they can sell their excess of their production from their quotas on the farmers markets. There is a black market that exists, but it strikes you as amazing how somebody can survive earning \$20 a month. Children seemed to be happy like kids usually are, friendly. I could walk the streets in Havana at night and not feel threatened. The country is drug free, and I don't know if that is related to not having the money to buy the drugs, or if it is related to their strict enforcement policies on drugs coming in or being sold in the country. They had lots of things we could learn from, from them. I am not saying it is perfect. The communist society is for the birds. It limits full freedom of expression, limits the ability of political parties through nominate candidates; but there are some good aspects of that society that we could emulate in some ways, the health care issues, education. I asked the minister, who is in charge, said, "What society do you like best, ours or yours?" He said, "I would like a little bit of both." That's the way I would come down. I don't like the persecution of people for free speech. So, anyway I got interested in Cuba, and started, we started this mission out of the church. Originally I took down suitcases of rare medicines, of medicines that they didn't have such as cancer drugs and things like that, and now it is, unfortunately it is developing more into taking down some medicine, not prescription medicine like I had, but that are more of a tourist type issue, which is

educational, and helps to perhaps show us that these aren't the evil people that we thought they were. The people were very friendly.

LAW: Just a couple more questions, just got a couple final questions. What do you think the future of the profession holds?

CUNNINGHAM: The main change to my way of thinking is in technology. Everything is now on the computers from the time you check in in the morning to what you did during the day. Then you have the cell phones. When you go home, you are called on the cell phones. I don't know what the profession -- the thing I regret most of all, although I think is inevitable, and it is a great help, is how everything now seems to be ruled by the computers. We used to have libraries. We had a room twice this size, three times this size with books. We got rid of them all. Everyone has a little computer on their desk. We used to have secretaries that would come in and tell us, "You don't want to say that." Now we dictate and it comes out. It loses, at least to me, some of its charm. I think lawyers are much more aggressive in seeking clients, and I would be concerned that that's in the future too. I see its turning more to a business model than a professional model, big law firms, big bills, big clients. How can the little people afford us?

LAW: This is just in regards to your legal career. If you had to do it all over again, would you do anything different?

CUNNINGHAM: Would I be a lawyer?

LAW: In your legal career if you had to do it over again, would you do anything differently?

CUNNINGHAM: I probably would have applied to the U.S. Attorney's Office.

LAW: Why so?

CUNNINGHAM: Because I like trial work.

LAW: You mean when you got out of law school?

CUNNINGHAM: It took me about ten years to figure out where my niche was.

LAW: Okay, got you.

CUNNINGHAM: There you don't have to worry about clients. You seem to always have plenty of them. That's the area that I like, and the area that I think that I was probably best suited for. I am not what they call a "whereas lawyer, whereas this, whereas that, now therefore." I did a number of bond issues for the hospital, and I didn't find that particularly exciting. You didn't stay up at night wondering if this is, this witness is going to come across or not come across.

LAW: Well, that raises for me a question. Are there any cases that you still struggle with today?

CUNNINGHAM: Not really. Sometimes I think this Jansen case, if it had been decided ten years later, he would have gotten one hell of a larger verdict if we had won it. I think it was a cliff hanger on winning it. At the time we won it, it was I think the second or third largest verdict in this county. Ten, twelve, fifteen years later there came across this St. John's case which was a ten million dollar. That's another aspect that's changed. When I originally came here, the size of the verdicts were, didn't even approach the size that you sometimes get now.

LAW: You know, Mr. Cunningham, I neglected to ask you if you had any memories of teaching health law out at the University of Illinois Springfield?

CUNNINGHAM: Yes, I had -- that was fun. I taught them on the basis of cases and of course a little bit of the statutes. But I would copy cases, here are the cases, and pass them out with my textbook, and then I had a textbook for the general background. I think the kids enjoyed it. I had just last week or the week before someone I was at this art

show at the Hoogland [Center for the Arts], and he came up to me and said -- this is a real ego boost to me. "I had your case in health law at the University of Illinois, and you know, that was the best course I ever had." It was rewarding. It was difficult for me because I was practicing law full time at that time, and I would work on it on Saturdays and Sundays for the class, which was usually, I think it was about two hour, three hour class once a week. I found this is a lot, not a lot, but a number of people were working full time, taking these classes. I found the students really very intelligent and fun to work with, to bounce ideas off of, which is what these cases would be like the apparent agency cases, is that one that you think is right, some of the liability cases, guardianship cases, whole plethora of the issues that you have in health care.

LAW: Mr. Cunningham, what do you want to be remembered for? What is your legacy?

CUNNINGHAM: I don't suppose I have a legacy; being a fair minded lawyer who tried to resolve contentious issues, and was fairly successful in that. I would like to also be remembered as a father of four wonderful kids, and a husband of a wife that has put up with my ups and downs, and is a wonderful lady.

LAW: Mr. Cunningham, I think we will end on that note. Thank you, sir.

CUNNINGHAM: Can you put that last part in highlights?

LAW: We can.

[Total Running Time: 02:00:48]

**END OF INTERVIEW THREE**

**END OF ORAL HISTORY**