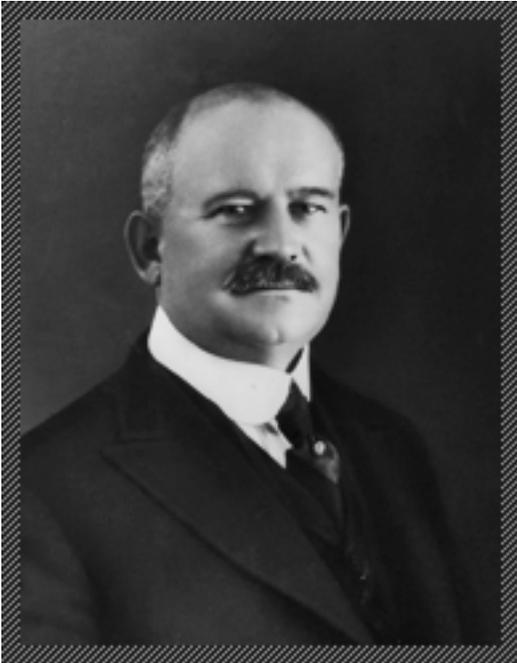


## Warren W. Duncan 1915-1933

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Warren Webster Duncan served two nine-year terms on the Supreme Court. He was elected in 1915 and reelected in 1924. In 1933, when his term expired, he chose to retire. He



was born January 21, 1857, in Lake Creek township in Williamson County, Illinois. The community, which was about six miles north of Marion, was named Shakerag, and later became part of the incorporated town of Johnston City.<sup>1</sup> When he was born, southern Illinois was barely one generation removed from the frontier era and must have still burned with the ardent patriotism of early nationhood since his parents, Andrew Jackson Duncan and Nancy Powell Duncan, named their son after Joseph Warren, a

Revolutionary War hero killed at Bunker Hill, and Daniel Webster, one of the most popular statesmen of the nineteenth century.<sup>2</sup>

Since his father was a successful merchant, Duncan did not grow up with want. Thus when he completed all his courses at the local public schools he was able to travel about twenty miles north to attend Ewing College, from which he graduated with a Bachelor of arts degree in 1879.<sup>3</sup> After a brief tenure as a public school teacher he returned to his alma mater for a Master of Arts degree that he received in 1883. After obtaining his second college degree, he studied law briefly in the office of Judge W. H. Williams in Benton, the seat of neighboring Franklin County, then in the office of Judge George R. Young in Marion. A little more than a year later,

in October 1884, he enrolled at St. Louis Law College and in less than a year obtained a law degree with honors in 1885. He entered the law profession February 25, 1885, practicing in Mt. Vernon until August 1886, at which time he relocated to Marion, which remained his hometown the rest of his life.<sup>4</sup> That same year his election to a four-year term as county judge for Williamson County marked the beginning of his public service career.

He returned to the full-time practice of law in 1890 and except for his service as a presidential elector in 1896 as a Republican he kept himself to the business of law. During this period, which ended in 1903, he earned a reputation as one of southern Illinois' most outstanding lawyers.<sup>5</sup> In 1903, he was elected as a circuit judge, serving for twelve years until his election to the Supreme Court in 1915. In 1909, the Supreme Court recognized his ability in the local circuit and appointed him to the Appellate Court for the Fourth District in Mt. Vernon. He remained on the appellate bench but from 1911 until 1915 he had to serve in the First District in Chicago as a new state law precluded appellate judges from sitting on the bench in their home circuit.<sup>6</sup>

As a Republican, he ran successfully from the First Judicial District of the Supreme Court in 1915. In keeping with the court's practice of rotating the Chief Justice position, Duncan served as Chief Justice for the year commencing June 1919. His first term on the bench covered the entire period of the United States involvement in World War I. As a member of the Court, he served on the executive committee of the State Council of Defense along with such prominent Illinoisans as Samuel Insull, Charles Deneen, Joseph Fifer, Edward Dunne, William Hale Thompson, and a score of others.<sup>7</sup> He was reelected to the Supreme Court in 1924, but when he considered yet another term to begin in 1933, he decided to retire from the bench. His years of service on the Supreme Court coincided with the transition in the United States from the

Progressive Era to the post-World War I world of the 1920s. As such, Duncan was present on the court for some notable cases.

In 1919, as Chief Justice he wrote the unanimous opinion in *Hagler et al. v. Larner et al.*, in which thirteen children sued the Granite City Board of Education for refusing their admittance to school because they had not been vaccinated for small-pox. Duncan wrote that a “child infected with small-pox may communicate the disease to hundreds of others, and the disastrous results therefrom are incalculable.” He noted that some people chose not to vaccinate their children because of the risk of contracting the disease itself, but that a child’s “right to enjoy school” should not “expose other people unnecessarily to dangerous diseases.” Duncan concluded that the Board of Education did not have “an unreasonable requirement to prevent children from having the benefits of school unless vaccinated” affirming the Granite City Board of Education’s and the lower court’s decision.<sup>8</sup>

In another case, Governor Len Small may be remembered for a case in which Warren Duncan played a role. Small was elected governor in 1920 after serving a term as state treasurer. After he moved into the Governor’s mansion in Springfield, he and his Lieutenant Governor, Fred Sterling, and some of Small’s associates from his hometown in Kankakee County were indicted for embezzling state funds during his time in the treasurer’s office. The individuals were accused of investing the state’s funds, rather than actually stealing the money, then keeping the proceeds for themselves. After several trials involving strained laws and uncertain facts, Small was acquitted in 1922. However, Edward Brundage, the Illinois Attorney General and Small’s political enemy, brought a civil suit to force Small to pay more than \$1 million to cover what he calculated as the state treasury’s loss. The case ultimately went to the Supreme Court in early 1926. The court in effect agreed to a compromise in which Small would have to pay

\$650,000 into the treasury.<sup>9</sup> Warren Duncan and Oscar Heard dissented from the majority, with Duncan writing the dissent concluding that the court was wrong because of “of a misconception of the facts in the record and a misconception in regard to the system of bookkeeping in the treasurer’s office.”<sup>10</sup>

Duncan left the court and retired in 1933. After several serious operations within a few years, his health declined and on the early morning of April 11, 1938 he died at his home in Marion at 81 years of age. His funeral and services were held at his home and a few blocks away at the Christian Church where he had been a member. He was buried in Rose Hill Cemetery in Marion. He was survived by his widow, Ella Goodall Duncan, whom he married in 1890, and his only child, Pauline Bolger of Denver, Colorado.<sup>11</sup>

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<sup>1</sup> *Marion Daily Republican*, 11 April 1938, 1.

<sup>2</sup> Remarks by Hosea V. Ferrell of Marion in a memorial service, 369 Ill.12 (1938).

<sup>3</sup> Remarks by Charles Rundall of the Illinois State Bar Association in a memorial service, 369 Ill. 11-12 (1938); *Marion Daily Republican*, 11 April 1938, 1. Ewing College was in operation from 1867 to 1925.

<sup>4</sup> *Ibid.*; 369 Ill. 12.

<sup>5</sup> *Ibid.*, 14.

<sup>6</sup> *Ibid.*, 15; 15 *Law Notes* 113 (September 1911); *Marion Daily Republican*, 11 April 1938, 1.

<sup>7</sup> *Chicago Tribune*, 14 April 1919, 2.

<sup>8</sup> *Hagler et al. v. Larner et al.*, 284 Ill. 547 (1918).

<sup>9</sup> Robert P. Howard, *Illinois: A History of the Prairie State* (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1972), 465-67. Small was able to pay the money in large part by forcing state employees to contribute to his campaign fund.

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<sup>10</sup> *Chicago Tribune*, 18 February 1926, 10; *People v. Small*, 319 Ill. 437 (1926).

<sup>11</sup> 369 Ill. 16; *Marion Daily Republican*, 11 April 1938, 1; *Carbondale Free Press*, 12 April 1938, 1.