

Joseph F. Cunningham
1987-1988, 1991-1992

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One of five justices to serve non-consecutive terms on the Illinois Supreme Court, Joseph F. Cunningham was born in East St. Louis on February 25, 1924, the son of Joseph F. and Emily



Hoffarth Cunningham.¹ After graduating from the city's Central Catholic High School, he joined the Army Air Corps and performed research work during World War II. Receiving a chemical engineering degree from the University of Dayton in 1946, he earned a law degree from Washington University in St. Louis in 1952. That year he was admitted to the Missouri and Illinois bars and to practice before the U.S. Supreme Court and the Eighth Circuit Federal Court, and Eastern District, Missouri. On June 20,

1953, he married Mary Margaret Keeley, and they became the parents of a daughter and four sons, three of whom died in infancy.²

In his early years of practice, Cunningham served as corporation counsel for two municipalities. In 1965, he became Magistrate for the Twentieth Judicial Circuit and Chief Magistrate four years later. The post was changed to Chief Associate Judge in 1970, and in 1972 he was appointed a circuit judge for the Twentieth Judicial Circuit, comprising of St. Clair, Monroe, Randolph, Washington, and Perry counties. A Democrat, he won election to the position

in 1974 and was retained in 1980 and 1986. He served as Chief Judge of the circuit from 1975 to 1984, and reelected in 1987.³

As a trial judge, Cunningham garnered statewide attention for striking down Illinois' death penalty statute, which required the convening of a three-judge panel to determine whether a convicted death-eligible defendant should be executed. In a 1975 case involving two convicted murderers, Cunningham and two other judges refused to conduct a death-penalty hearing, contending that the 1970 Illinois Constitution limited the power to create courts to the judiciary, with no authority to the General Assembly. The prosecutor, St. Clair County State's Attorney Robert H. Rice, then appealed to the Illinois Supreme Court for a writ of mandamus that would force the death-penalty hearing. In *People ex rel. Rice v. Cunningham*, the Supreme Court upheld Cunningham's ruling. Justice Thomas Kluczynski delivered the opinion that invalidated the statute.⁴

In September 1987, the Supreme Court justices appointed Cunningham to fill the Fifth Judicial District vacancy created by the retirement of Justice Joseph M. Goldenhersh. The district comprises the state's thirty-seven southernmost counties, and Cunningham agreed not to seek election to the position that Goldenhersh had held for seventeen years. "I basically believe in fundamental fairness and following the law," Cunningham told reporters at the time of his appointment. "I've been on the bench for 22 years, and this will be the high point."⁵ Southern Illinois colleagues praised the choice of the soft-spoken, conscientious Cunningham. "He's fair to a fault," acknowledged Belleville lawyer Bruce Cook. "He goes overboard in letting each side offer anything they want before he rules. His patience sometimes gets people impatient."⁶

As he assumed a seat on the state's highest court, Cunningham declined to offer insight into his judicial philosophy on potentially controversial issues. "I'll take them case by case as they are assigned to me and do the best job I can," he said. "When they come before me, that's when I'll make the decision."⁷

During his tenure, Cunningham wrote the opinion in a 1987 disciplinary case, *In re Jiro Yamaguchi*. Chicago attorney Yamaguchi aided the unauthorized practice of law and engaged in fraudulent conduct by signing blank tax-appeal board complaint forms for a real estate broker as well as signing forms filled out by the broker without reviewing them. The Attorney Registration and Disciplinary Commission sought to disbar Yamaguchi, but Cunningham ordered only a six-month suspension, citing no proof that the lawyer had profited from the misconduct or that he had actually harmed or intended harm anyone.⁸

Completing the appointed term in December 1988, Cunningham was succeeded by fellow Democrat Horace L. Calvo. In 1990, Cunningham became Director of the Administrative Office of the Illinois Courts, assisting the Supreme Court justices in administering the state's courts system. He served in that position until rejoining the Supreme Court in June, 1991, to succeed Calvo, who died in office after serving less than two years.⁹

Cunningham authored the Court opinion in a 1992 case, *In re Estate of Finley*, reversing the Fourth District Appellate Court regarding a wrongful death statute. In 1990, six-year-old Shawn Finley had been struck and killed by a semi-trailer. His parents received a settlement from the trucking firm and its insurance companies. His siblings, who were "expressly excluded any recovery," sued for "loss of society" from their brother's death. Cunningham delivered the opinion establishing sibling rights in "proven loss of society" cases.¹⁰

Moses W. Harrison II won the 1992 election to succeed the appointed Cunningham. During his two assignments on the Supreme Court, Cunningham participated in seventy-one majority opinions, one special concurrence, and one dissent.¹¹ Following his second retirement, he maintained a law practice in Waterloo, Illinois.

Cunningham served as Chairman of the Conference of Chief Judges from 1979 through 1981 and was a member of the Executive Committee of the Illinois Judicial Conference. He also was president of the Illinois Magistrates Association, and president of the Illinois Judges Association. He received a Distinguished Alumni Award from Washington University and served as an adjunct professor at McKendree College, Lebanon. In 2002, the Illinois State Bar Association honored Cunningham as a Senior Counsellor.¹² A member of the Knights of Columbus, he served as a Eucharistic minister at Our Lady of Assumption Catholic Church in Fairview Heights. On July 13, 2008, at the age of eighty-four, Cunningham died at St. Anthony's Medical Center, St. Louis. Following Mass of Christian Burial at St. Peter's Cathedral in Belleville, he was buried in the city's Mount Carmel Catholic Cemetery.

¹ The others: Jesse B. Thomas, 1843-1845, 1847-1848; David J. Baker, 1878-1879, 1888-1897; Thomas E. Kluczynski, 1966-1976, 1978-1980; and Caswell J. Crebs, 1969-1970, 1975-1976.

² *Belleville News-Democrat*, 15 July 2008, p. B2.

³ *Illinois Issues*, Aug.-Sept. 1990, Cunningham file, Illinois Supreme Court Library.

⁴ 61 Ill. 2d, 353-64; *Chicago Lawyer*, January 1988, Cunningham file, Illinois Supreme Court Library.

⁵ *State Journal-Register* (Springfield), 16 September 1987, p. 1.

⁶ *Chicago Lawyer*, January 1988.

⁷ *Chicago Tribune*, 16 September 1987, Sec. 1, p. 3.

⁸ 118 Ill. 2d, 417-29; *Chicago Lawyer*, January 1988. Two years later the Supreme Court disbarred Yamaguchi, following Attorney Registration and Disciplinary Commission findings that he had converted to personal use more than \$225,000 in client funds. *Chicago Tribune*, 31 March 1989, Sec. 2, p.1.

⁹ *Chicago Law Bulletin*, 11 June 1991, Cunningham file, Illinois Supreme Court Library.

¹⁰ 151 Ill. 2d, 95-107.

¹¹ Clerk of the Supreme Court of Illinois to Chief Justice Thomas Fitzgerald, 20 April 2009, Cunningham file, Illinois Supreme Court Library.

¹² Illinois State Bar Association, *Bar News*, August 2008, Cunningham file, Illinois Supreme Court Library.