



Memorial Service

Held in the Supreme Court of Illinois
at the May 2009 Term on the
Life, Character, and Public Service
of the Late Justice Howard C. Ryan
and Justice Joseph F. Cunningham

Wednesday, May 20, 2009
2:00 p.m.

Illinois Supreme Court
Springfield, Illinois

SUPREME COURT OF ILLINOIS
JUSTICES

THOMAS R. FITZGERALD, Chief Justice
Chicago, Illinois (1st District)

CHARLES E. FREEMAN
Chicago, Illinois (1st District)

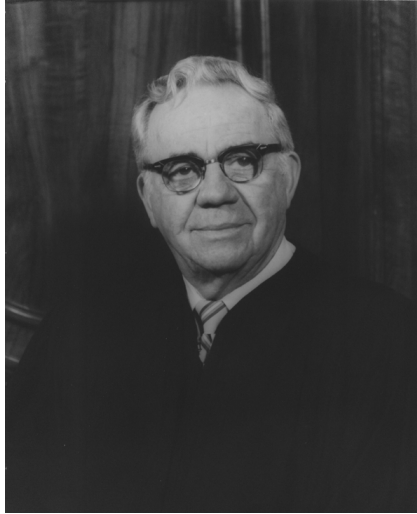
ROBERT R. THOMAS
Wheaton, Illinois (2nd District)

THOMAS L. KILBRIDE
Rock Island, Illinois (3rd District)

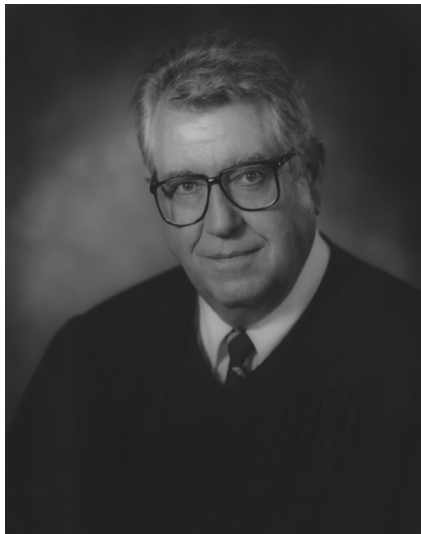
RITA B. GARMAN
Danville, Illinois (4th District)

LLOYD A. KARMEIER
Nashville, Illinois (5th District)

ANNE M. BURKE
Chicago, Illinois (1st District)



Justice Howard C. Ryan
June 17, 1916 – December 10, 2008



Justice Joseph F. Cunningham
February 25, 1924 – July 13, 2008

At 2:00 p.m. on Wednesday, May 20, 2009, other business being suspended, the following proceedings were had:

CHIEF JUSTICE FITZGERALD:

Before we begin with the program, I want to make a few recognitions of people who are present today. I'm going to begin with Justice Ben Miller. I know he was here just a moment ago; he's present today. Because of the devices we now have in the back, we have a television so I was able to watch the room, and I saw Ben come in. We didn't think he was going to be able to make it. I would like to also introduce Cynthia Cobbs, who is the Director of the Illinois Administrative Office, and I think that it's appropriate to note that that's one of the most difficult jobs in the system and that was a job held by Justice Cunningham for two years.

Next, can I introduce Juleann Hornyak? Juleann is the Clerk of the Court, and she was indispensable in putting this memorial service together today. I want to personally thank her and all the people that I know helped her. I'm going to ask that the other Court employees simply stand now—Jerry Larkin and Karen Johnson and others, if you'd just stand. We have a great group of employees that have been here for many years and in most instances longer than the judges, so if you could just stand up, I want a little round of applause.

I hope Judge Mills is here; I'm looking right at him I think. Judge Mills, I'm going to have you be the representative of the judges. The senior judge from the local federal court here is religious in his respect for the Supreme Court, and we very much appreciate it. Now I'm going to ask all the other judges to stand up. The experience of being a member of this Court is extraordinary, and it's an extraordinary accomplishment for anybody who's ever done it. One of the things that I've learned along the way is that it is in its own way rewarding and wonderful is that we get to use the royal "we," and we do. I've realized after being embarrassed about doing it a few times that it was accurate. When you become a member of the Court, you don't really leave the Court when you leave it because you leave the opinions that you've written during your time on the Court. If we talk about those opinions, we who are the seven mem-

bers who are the present residents, we talk about what we said and we announce that we said this or we said that, and we could be citing from a 1930 opinion or certainly from an opinion of Justice Ryan or Justice Cunningham. So in a very real sense, the people that we honor today are still with us on the Court and will be for as long as the books are there.

With that, I think it would be interesting to note the body of work that we're talking about here. I've been supplied by our wonderful librarian this information. Justice Ryan, who served as the Chief Justice from 1982 to 1985, during his long tenure on the Court, authored 157 majority opinions, 25 special concurrences, and 135 dissents, equaling 317 writings contained in 96 volumes of the *Illinois Reports* from 47 Ill. 2d to 142 Ill. 2d—a remarkable accomplishment and legacy.

Justice Cunningham was the only person that I am aware of, and I'm sure I'll have somebody afterwards tell me about the one I didn't know about, who was twice appointed to be a member of this Court, for 1987 and 1988, and 1991 and 1992. Just to keep busy, in the two years in between those appointments, he served in the same job that Cynthia Cobbs now serves in as Director of the Administrative Office of Illinois Courts. I would like to be able to ask him, of the two jobs he had during that period of life, which one was the hardest, and I'm confident it wouldn't have been the judge. I would note that he did have time, however, to author 71 majority opinions, a special concurrence, and a dissent equaling 73 individual writings. These writings are contained in 22 volumes of the *Illinois Reports*, 117 Ill. 2d through 126 Ill. 2d and 143 Ill. 2d through 154 Ill. 2d.

If all we could say about these wonderful men was what I just have said, we would have said volumes, but we do have a program that we're going to follow. My first speaker in this program is my colleague, my friend, and my brother, the Honorable Thomas L. Kilbride, Supreme Court Justice from the Third District.

JUSTICE KILBRIDE:

Thank you. The L is for La Salle County. As the current Supreme Court Justice from the Third District, it's my privilege to participate in this memorial service in honor of Howard Ryan. Jus-

tice Ryan was the second justice on our Court to serve from La Salle County; the first was John Caton in the mid-1800s. I might add that as my birth place, La Salle County is close to my heart. I know there are many family members and friends of Justice Ryan who are here from La Salle County. In fact Justice Ryan's former law clerk, Robert Carter, now serving as a justice on the Third District Appellate Court, is our unofficial court historian of the Third Judicial District.

We're here today with friends, family, and colleagues to share and reinforce our memories of this respected justice. Justice Ryan served on our Court for 20 years, first elected in 1970. He served as Chief Justice from January 1982 to January 1985. When he retired in 1990, he had served 36 years as a judge in Illinois. He had an excellent reputation. All who knew him appreciated his sense of humor and his great compassion. His friends knew him as learned in the law, possessing a deep appreciation for practical solutions in any situation, and passionate about justice.

His passion for justice may be exemplified by his legendary and largely unsung role as perhaps the key figure in the creation of the Illinois Interest on Lawyers Trust Accounts program, commonly known among the lawyers as the IOLTA program. According to Ruth Ann Schmitt, Executive Director of the IOLTA program, it began under Justice Ryan's leadership in 1983, as she added, "with no money in the bank, but it had Chief Justice Ryan and a grand plan." To work successfully the Lawyers Trust Accounts had to convince lawyers collectively to pool nominal interest on tens of thousands of lawyer accounts, and the combined interest on those accounts could then be distributed to legal aid organizations throughout Illinois.

Now here's what's interesting. The program started as a voluntary effort, and encouraging attorney participation was critical. To attract voluntary participation then Chief Justice Ryan personally signed over 30,000 letters. As you can imagine, it was an extremely labor intensive endeavor, accomplished, as Ruth Ann Schmitt referred to it, as a signing-and-talking session, when he signed as many as 8,000 letters in one sitting over several hours; that's right, 30,000 signed letters. So Judge Ryan, there's no excuse for not sending out a lot of Christmas cards.

Justice Ryan's leadership role in starting the Lawyers Trust program has netted impressive results. Today that program is the largest single Illinois-based source of funding for legal aid in Illinois. Last year alone the program awarded \$13 million in grants; over the history of the program it has awarded just shy of \$100 million. Those 30,000 letters that Justice Ryan signed in 1983 have yielded a great return on his leadership. As one who deeply appreciated practical solutions and who possessed a passion for justice, he is surely proud of a program making possible the practical solution of funding justice through legal aid organizations in Illinois.

In closing, I know that Justice Ryan radiated decency in his life; residing in rural Tonica, he personified the country gentleman. He served as a mentor for many of the lawyers and judges in this room today. For many here today, he was supportive and thoroughly agreeable as a mentor and colleague. Justice Ryan was generous with his time, loyalty, and friendships, having touched the lives of so many. Today is especially a time of remembrances for his children Elizabeth and Chris, Judge H. Chris Ryan, and his grandchildren and other family members. It's a sad time, but it's also a time for great pride in his accomplishments and is showing of the admiration to this Court and the community of lawyers and judges throughout Illinois have for Howard Ryan. Thank you.

CHIEF JUSTICE FITZGERALD:

The next speaker, like Justice Kilbride, is my colleague, my friend, and my brother. I introduce to you now, Supreme Court Justice from the Fifth District in the State of Illinois, the Honorable Lloyd A. Karmeier.

JUSTICE KARMEIER:

Thank you, Chief Justice Fitzgerald. Members of the Court, ladies and gentlemen, and especially Mary Cunningham and family, it's my pleasure to come before you this afternoon as we reflect also on the life and the career of Justice Joseph F. Cunningham. When prominent men and women pass from the world, it is common for us to mark the event with an accounting of their accomplishments. It is altogether fitting and proper that we do so in the case of Justice

Cunningham because his accomplishments were substantial. He was born 85 years ago in East St. Louis, Illinois. He received his bachelor's degree from the University of Dayton, Ohio; J.D. from Washington University Law School; and was admitted to the Illinois bar in 1952. He later joined the bars of the U.S. Supreme Court, the United States Court of Appeals for the Eighth Circuit, and the U.S. District Court for the Eastern District in Missouri.

After engaging in the private practice of law, Justice Cunningham began his judicial career in 1965 in the 20th Judicial Circuit, where he served as a magistrate, an associate judge, and a circuit judge. He was elected as Chief Judge of the 20th Judicial Circuit in 1975 and held that position until 1984. In 1987, he was again elected as Chief Judge, during which time he served as Chairman of the Conference of Chief Circuit Judges and as a member of the Executive Committee of the Illinois Judicial Conference. Justice Cunningham first joined our Court in 1987, filling a vacancy created by the retirement of Justice Joseph Goldenhersh. He served until 1988 when Justice Horace Calvo was elected to that position. As it turned out, Justice Calvo's tenure was very brief; he passed away in 1991, and the Supreme Court once again called upon Justice Cunningham to fill the vacancy. He remained on the Court until the following year when he was succeeded by Moses Harrison, who was elected to the post in November 1992.

As the Chief Justice alluded to, between his appointments to our Court, Justice Cunningham served as Director of the Administrative Office of the Illinois Courts. He was a recipient of the Distinguished Alumni Award from Washington University and an Adjunct Professor at McKendree College in Lebanon, Illinois. He served as the Director of Children First. He is survived, of course, by his devoted wife Mary, one son Joseph Thomas, and his daughter Da-Niel, who followed in her father's footsteps. I have known Da-Niel and Mary for many years, and both are here today. I'm glad to see them again.

When I first met Justice Cunningham, he was an associate judge before whom I appeared as a very young and very nervous attorney. While I don't recall the facts of the case, I do recall that—and this was an appearance in the big city of Belleville; I was from

Nashville in Washington County—but I recall him as being patient, gracious, and helpful to me as a young lawyer.

So far in my remarks I have referred to Justice Cunningham using his formal title. If he were here today, I think it would make him feel a little uncomfortable. To his friends and to his colleagues, and I consider myself one of them, he was always Joe. Joe was dedicated to his profession and to the judiciary of the state of Illinois. He was a workaholic, and he rarely took time off for vacation or to travel. He didn't golf or fish. The leisure time that he had, he dedicated to his wife and family, including his grandchildren as they came along. After he retired, he and Mary had some opportunities to travel, including a very special trip to France and England with his grandson Sean and an Alaskan cruise with his granddaughter Katie.

I really got to know Joe when he was reelected as Chief Circuit Judge in the 20th Judicial Circuit right after I had been elected as a Washington County Circuit Judge. Because I was from a small county, where about half of the lawyers in the county were my law partners, I had a lot of conflicts. Judge Cunningham recognized this, and he assigned me almost immediately to serve in St. Clair County handling a criminal felony jury docket with my colleague Judge Jerry Flynn, who I see in the back of the room. Judge Flynn was from Randolph County, and we were handling all of the criminal cases in St. Clair County for a number of years. He loaned me, at that time, his personal bench book, and he told me that his door was always open for any questions or just wanted to talk, and I took advantage of that opportunity often. I was recently reminded that Daniel referred to her father as her reference book. He always had the answers for any legal or procedural or other questions; so too it was with me, and I'm sure with many other young lawyers and judges.

I firmly believe that each of our lives is affected in many ways by the lives of others who touch ours, no matter how brief and no matter how long that contact may be. It was that way with Joe Cunningham with me. When I became a judge I recalled my earlier experience appearing before Judge Cunningham, and I determined that as a judge I would try to emulate his patience, his kindness, his understanding, and the professionalism he demonstrated both in

and out of court. During his second stint on the Supreme Court, Joe nominated and the Court appointed me to serve on the Supreme Court's Committee on Pattern Jury Instructions in Criminal Trials. That gave me the opportunity to get to know and work closely with many fine judges, lawyers, and criminal defense attorneys throughout Illinois. One of the judges I met is now Chief Justice Tom Fitzgerald. I recall that in the days when I was assigned to St. Clair County, whenever the judges had to assemble for ceremonial purposes, some of them would kid that the order of judges for seniority purposes, the procession would be as follows: circuit judges first, associate judges second, and Republicans last. Actually, there was only one Republican, and that was me.

Although Joe and I came from different parties, the party affiliation that I carried when I stood for elections became irrelevant when I took office. In all of our dealings, he treated me with the utmost respect and kindness; it is something I have never forgotten and have always appreciated. That was Joe's way; throughout his career he judged people for who they were, not who they knew. He did what he thought best regardless of personal or political consequences. He was very much his own person, answerable only to the law, his sense of duty, and of course to his dear wife Mary. That occasionally put him at odds with some people, and it would cost him and his family dearly, but it was also the reason he was selected by this Court, not once but twice, to join its ranks. That is why I believe this Court entrusted him to be its chief administrator.

Judges are different from other public officials. Our goal is not to advance an agenda or build a constituency, rather, we are but caretakers of a legal edifice bequeathed to us by generations long passed. The best any of us can do as judges is to ensure that the system of justice that we have inherited remains vital and fair and free until it is time for us to pass the gavel to those who follow. It can be a thankless undertaking, and it is no path to glory. Just look at the portraits of the judges filling this building—how many can you recognize without reading the nameplates? How many of their names stir recognition even after you have read them? But there was never a more important job in the life of our state and the nation than theirs, and Joe Cunningham understood this.

The continued vitality of this Court's judicial system is a testament to his service. When we needed someone to replace Justice Goldenhersh, we knew we could call on Joe Cunningham. When we needed a new administrative director, we knew we could call on Joe Cunningham. When Horace Calvo's death left the Fifth District's Supreme Court seat empty again, we knew we could call on Joe Cunningham. Joe was always there, ever enthusiastic, ever able, ever ready to serve the judicial branch and the people of the state of Illinois, but now he's gone. We can call on him no more. It falls to the rest of us to see that justice is done. If we can meet the challenge as he did, his legacy will be fulfilled. Thank you.

CHIEF JUSTICE FITZGERALD:

We have several tributes that will be offered today. We're going to begin with the Honorable John J. Stamos. Judge Stamos was a legendary figure in the time that I was a young lawyer. He was the State's Attorney of Cook County and had been in that office for a lengthy period of time before ascending to the top spot. He went from that spot to the Appellate Court, where he served for many years until he was eventually appointed to the Supreme Court of Illinois. He is a good friend, was a tremendous judge, and one of the most interesting people that ever came through our system. He is, amongst other things, two things that seem unusual: he is an accomplished artist. Today he left at the desk of each of the seven Justices a French Impressionist painting in a miniature scale. He does that all the time, and it's kind of his marking place. Second to that, and maybe even more interesting, he is an extraordinary dancer. If there's anybody here who hears the music, he's your guy. With that, let me introduce again John Stamos, retired Justice of the Illinois Supreme Court.

JUSTICE JOHN STAMOS:

After that sendoff, I think I'll quit while I'm ahead. Justices, families of Ryan and Cunningham, friends of the judges, these occasions are bittersweet. We have tears and sorrow, but I like to look at the bright side, the sweet side. There isn't much here for me to talk about, but I will remember Joe. You see the building across the

street? That's the state library, and twenty years ago that was being built. Joe was very well versed in the building trades—I don't know where he learned it—but he'd be in the conference room in the morning, and he would take us to the window and point out the building and explain to us what the plumber was doing, what the mason was doing, the electrician, and I envied this. It's the old adage, "We're all ignorant about things, but some people are more ignorant about other things." Joe twice was selected to serve on the Court and did a tremendous job, but the good job that he did was he took over the Administrative Office, which in those days I would say was like a quagmire, and within a year he straightened it out and brought it into the 21st Century.

I will remember Howard. I regret that I didn't know these gentlemen for a longer period of time. In many respects they were alike. They were soft-spoken, never raised their voice, and never heard them criticize or say anything about anyone that was unpopular. Howard took great delight in telling us about the walnut trees he planted on his farm. Chris, how many were there, 150? These were for his great-grandchildren, because I was told it takes forty years for an oak tree to come to fruition to be harvested. He said that was for his great-grandchildren. Some people leave diamonds; he left trees.

There are three kinds of people in the world. There are people that talk about ideas, people that talk about things, and people that talk about people. Joe and Howard always liked to talk about ideas. They were down to Earth and didn't engage in any nonsense and the idle chitchat. They were mature adults, and I felt that my life was enriched by knowing them. I'm sure yours would be too. I'm sure that in passing they could—like some people can't—look back on their lives and say, "I left the world a little better place than I found it." As my minister once said, "We are placed on Earth to do good things. We're placed on Earth to do good to others." My father came home, and he said, "Well why aren't the others here?"

Howard occupied the chambers upstairs. As you know, the judges have chambers upstairs, along with a dining room and a kitchen. His chambers faced south, which was the trees and the foliage. Occasionally cardinal birds would sit out there. Tom Moran

was in the adjoining chambers. One morning, like now, it's almost twenty years to the day, Howard woke up in the morning, went to the open window, looked out, and didn't see any cardinals. Unusual, so he started to chirp like a cardinal, and he whistled, and he chirped, and he whistled, and finally a cardinal responded over here. It would chirp, and it would whistle and chirp. It was Tom Moran! The two of them engaged in a serenade, chirp and peck, and they came to the breakfast table with tears running down their faces. I don't know how long this went on, they never told us. I don't think we had much of a conference that day; we kept calling upon them to chirp and whistle.

In closing I hope they will find a place of peace and serenity, and may their memory be eternal. Thank you.

CHIEF JUSTICE FITZGERALD:

Our next speaker is a veteran judge who has been my friend for thirty years. I think that John may be the longest serving judge. If not, he's close to it. Next we'll hear from the Honorable John P. Shonkwiler, Chief Judge of the Sixth Circuit.

JUDGE JOHN P. SHONKWILER:

Thank you Mr. Chief Justice. Chief Justice Fitzgerald, Justices, the Cunningham family, and friends, Mary asked that I make a few remarks about the life and times of her husband. I like to call him Joe, and it's a privilege and an honor to speak in tribute to such an outstanding jurist and person. I told Justice Stamos that Justice Karmerier did such a good job speaking about Justice Cunningham, I might as well sit down because he's pretty well covered everything and more. So if you'll bear with me, we'll go through it again.

Justice Joseph F. Cunningham was born in East St. Louis on February 25, 1924. He received his B.A. degree from the University of Dayton, Dayton, Ohio, and his Juris Doctor from Washington University in St. Louis in 1952, from which he subsequently received its prestigious Distinguished Alumni Award. He was a member of both the Illinois and Missouri bar. During World War II, he was engaged in research for the Army Air Corps. He married Mary Margaret Keely on June 20, 1953, and they had two children, Tom,

who's with us today, has a Ph.D., and is engaged in research on the human brain; and Da-Niel, also with us today, an attorney with the Missouri Attorney General's Office. He has two grandchildren, Sean and Kate.

After graduation from law school he was engaged in the civil practice of law, including serving as corporate counsel for the cities of New Baden and Trenton, Illinois, from 1960 to 1965. On December 6, 1965, he was appointed Magistrate of the 20th Judicial Circuit and was appointed Chief Magistrate in 1969 and Chief Associate Judge in 1970. Two years later on April 14, 1972, the Supreme Court appointed him to the office of Circuit Judge, pending the election to fill the vacancy to which he was appointed. He was elected to that position in November 1974 and was retained by the electorate in 1980 and 1986.

During the time he was on the circuit bench, he served as Presiding Judge at the civil division. He was elected by his peers as Chief Circuit Judge, 20th Judicial Circuit in 1975 and served in that capacity until 1984. He was again elected Chief Circuit Judge in 1987, and served until September 16, 1987, when he was appointed to the Supreme Court to fill the vacancy due to the retirement of Justice Goldenhersh. He served on the Supreme Court until December 4, 1988, when Justice Calvo was elected to the Court. Justice Cunningham retired from the bench at that time.

Subsequently, the Supreme Court, recognizing his outstanding administrative ability and wide experience and expertise in matters involving all aspects of the judiciary, appointed him Director of the Administrative Office of the Illinois Courts on July 15, 1990. He served as director until he was again reappointed to the Supreme Court on June 17, 1991, filling the vacancy created by the death of Justice Horace Calvo and serving until the election of Justice Harrison. He retired on December 6, 1992. While on the Supreme Court he authored 71 majority opinions, one specially concurring opinion, and only one dissent.

As Justice Karmeier pointed out, Justice Cunningham was always focused on doing the right thing regardless of the consequences. I was speaking recently to the executive director of the Election Board of East St. Louis, who the judge appointed in 1978

with directions to take a proactive approach by conducting a complete canvas. Shortly thereafter the director called the judge and stated that a serious dispute may be brewing with an official. The judge told him, “Don’t worry. Do what’s right, and I’ll back you.” The dispute did arise, the director made his decision, and the judge supported and backed him to the hilt. The executive director felt this was a typical example of the judge’s character. I couldn’t agree more—he did what he thought was right and sometimes suffered for it. Whether on the bench or serving as director, he always had a calm and deliberate manner and was one who worked well with all those in every station of life, treating everyone with dignity and respect.

Justice Cunningham and his commitment and dedication to law and administration of justice is absolutely unquestioned. For instance, he was one of the main organizers of the Illinois Magistrates Association. He was elected President of the Illinois Judges Association in 1981, Chair of the Coordinating Committee of the Associate Judges Seminar, Chairman of the Conference of Chief Circuit Judges from 1979 to 1981, member of the Executive Committee of the Illinois Judicial Conference from 1982 to 1987, Chair of the ad-hoc Committee on Supreme Court Article V Rules, Supreme Court liaison to the Committee on Illinois Criminal Pattern Jury Instructions, Supreme Court liaison to its Rules Committee, and Chairman of the Illinois Courts Commission. During this time he was also Adjunct Professor at McKendree College and member of the Board of Directors of Children First that was later established statewide.

Justice Cunningham passed away on Sunday, July 13, 2008. During the 26 years as an outstanding jurist serving on both the Circuit Court and the Supreme Court and as Director of Administrative Office, he brought a wealth of judicial and administrative experience that he freely gave to the judiciary and to the people of the State of Illinois. He was a consummate husband and father who loved his family dearly. Mary said one of the many high points with his family was a trip to Paris and London in 2006, with herself and their only grandson Sean. He had a quiet strength, innate leadership ability, insightful wisdom, and a strong sense of duty, ethics, and morality that serves as an example and inspiration to us all. He is

sorely missed but will never be forgotten by those who knew him, and I know we all wish his family well.

CHIEF JUSTICE FITZGERALD:

Our final speaker is James R. Troupis, Esquire, I'm told from Madison, Wisconsin, by way of clerkship with Justice Howard Ryan. You may proceed, sir.

MR. JAMES R. TROUPIS:

Mr. Chief Justice, Honorable Justices of the Court, Justices of the Appellate Court, judges from throughout the state, family and friends, and more than fifteen former law clerks of Mr. Justice Ryan who have travelled from throughout the country to join us today for this service, I cannot tell you how great an honor it is to be able to speak and say a few words for a former judge, former Justice, former Chief Justice Howard Ryan.

Consider for a moment this picture: an old man, an octogenarian, half-blind, shoveling the sidewalk outside his hundred-year-old two-story brick home. It's cold, it's still snowing a bit, but there he is shoveling away. As he reaches the edge of the walk he realizes that his neighbor's walk too must be shoveled, and he goes on in the early morning hour's darkness shoveling away, clearing his neighbor's walk. Not a word is spoken, there is no request for thanks, and there's no acknowledgment for whoever cleared that walk. Now consider this picture, it's a beautiful early summer day, not unlike today here in Springfield, a sixty-year-old gentleman brings stunning roses to a woman in the clerk's office. She works each day in that office as a clerk serving his needs and the needs of many others. He again asks no thanks but simply enjoys the smile and the sheer joy of bringing something beautiful to that office and to that clerk. That rose is something he has grown with his own hands, he has weeded, he has fed, he has watered every day, in the heat, in the cold, and in the rain. That's a portrait of a great trust and a great man: trust in people, trust in God, trust in the beauty and gift that each day brought. That trust is, I would propose, the dominant and essential characteristic that made Mr. Justice Ryan who he was.

It is appropriate today, in this extraordinary place, to review how that core belief of this great man affected his role as a member of this honorable Supreme Court and continues to affect every person here in the state of Illinois. Justice Ryan spent more than a decade on the trial court bench. While we remember him today as a Supreme Court Justice, I believe he would be the first to say he was no more or less than a trial judge. Those were Justice Ryan's judicial roots. He understood better than most that the role of the trial court is the most important court, the trial court that will be, after all, the court of last resort for the vast majority of those who interface with the court system. Time and time again, Justice Ryan reminded this honorable Court and all courts of the importance of the trial judge and of our trial courts.

In 1989 in the *Brisbon* case, he concluded, "We must emphasize that the trial court judge is entitled to deference in removing a potential juror, given the superior position the trial judge has to gauge the meaning of prospective juror's responses to questions that may be asked." In that same term he noted in the *Turner* case, "In resolving whether a delay is attributable to the defendant much deference must be given to the trial court judge." In 1988, in the *Fierer* case, he acknowledged yet again that while he and this Court might well and in fact did disagree with how the facts ought to be viewed they must defer to the trial court. A court of review should, in his words, "Defer to the trial courts discretion even though it may have struck the balance quite differently." Lastly, in a hotly contested and important 1985 child custody case cited to this day, speaking on behalf of this Supreme Court, he again demonstrated the humility of an appellate judge whose respect for the work of the trial judges everywhere is obvious, as he said, "Great deference must be accorded the trial court since the trial court is in the best position to judge the credibility of the witnesses and determine the best interests of that minor child."

This trust in the judgment of others and the humility to accept, as Justice Ryan did, the important limits of the powers that he had as a Justice or Chief Justice was demonstrated as well, I believe, in Mr. Justice Ryan's reverence, reverence for the role of the jury. This past week I was in Los Angeles, and I was meeting with and

working with one of Hollywood's most famous lawyers. While we were waiting for a federal magistrate judge, like all of us now aging trial lawyers we were recounting some memorable moments, and he told a story that every time he has a particularly arrogant celebrity to defend, a celebrity who seems to think he can get away with anything he chooses, he takes that person down to the L.A. County Courthouse to watch a jury selection—as he put it, “Did you ever see the bar scene in Star Wars?” Looking at the jury pool is, well isn't it a whole lot like the bar scene for that self-important celebrity, a different planet, a different galaxy? Now, while that's an amusing thought, it's a bit reassuring as well isn't it? We have a system of justice with a foundation firmly set in the judgment of our fellow citizens, our peers. We cannot escape that ultimate statement about who we are as a country. This is a remarkable moment in history for the most exceptional nation that has ever existed. We must accept that no person stands above another person in the eyes of the law. That's a tough concept, isn't it, in this day of celebrity?

For Justice Ryan, whose trust in our system and whose innate belief in the essential good will and intelligence of his neighbors was never shaken, the jury represented the ultimate statement of liberty and the ultimate statement of freedom. In the 1988 *Joyce* case, he expressed that those beliefs when properly understood meant that the right to a jury trial is a right reserved to each citizen and only that citizen. It is never a right granted to the government, it is never a prerogative of the government to grant or deny. With a passion that rings true to this day, in his words, “We are dealing here with one of the most revered of all rights acquired by a people to protect themselves from the arbitrary use of power by the State. Trial by jury is a right guaranteed to the people and not to the State. The State here has argued that it has a constitutional right to a jury trial; that simply turns the concept of our Bill of Rights on its head. The jury was seen by Englishmen and colonists alike as a great privilege and liberty they had acquired to protect themselves from tyranny, first from the king and later from his government. When we speak of jury rights as they existed in the common law we are encompassing more than a concept of twelve people unanimously deciding issue of fact. We are speaking also of centuries of struggle where English-

men and colonists asserted an ancient liberty to protect themselves from the arbitrary power of the state.”

In recent years, judges have increasingly taken it on themselves to decide cases by summary judgment or other summary procedures. Justice Ryan would have found that an anathema, as it elevates the judge above the ordinary citizen. Picking sides simply would not do for a real trial judge, and that is what Mr. Justice Ryan was in every respect. Indeed, it was his very respect for the rule of law, not lip service about a court’s power, that governed his decisions in the many years on this Court. “Let no one tread,” he would say, “on the essential impartiality of the courts. No decision must swing on a judge’s empathy or on the day’s cause célèbre.”

In the 1984 *Finley* decision, he admonished the legislature, not to use filing fees as a source of money for social programs, as he explained, “Petitioners should not be required as a condition to their filing to support a general welfare program. If the right to attain justice freely is to be a meaningful guarantee it must preclude the legislature from raising general revenue through charges assessed to those who would otherwise freely utilize the courts.” The limits of powers, by the way, granted by the people to the legislature were as well balanced, unequivocally balanced, by limits on the powers granted by the people to the courts.

On the flip side, Chief Justice Ryan was quick to limit the reach of the courts. As he noted in 1982, “In our separation of powers scheme courts are not the law-making branch of government. We determine only constitutional boundaries, not what is done within those boundaries. A principle of decision-making cannot be allowed to stand where its effect is to delegate taxing powers to any court.” Indeed, as early as 1970 while he sat as a Justice on the Third District Appellate Court, he observed, “The authority to create a municipal corporation is a legislative function and any attempt to delegate this authority to courts is a violation of the constitutional principle of separation of powers.”

To understand just how deeply Justice Ryan held his beliefs on the rule of law and rejected public whim and public support as a basis for decision-making, recall that in 1979, decades before there would be a death penalty moratorium, he eloquently argued in *Cous-*

ins against that death penalty statute as he believed it would lead to the arbitrary use of power by state's attorneys. He was prescient in knowing that the elegance of our system of justice is in its restraints on power, not in the exercise of it.

As many will also recall Justice Ryan viewed principled decision-making as, frankly, not so difficult, but rather as an exercise in common sense. Consider how often he used that term, in *James* in 1987, "A probable cause determination is a commonsense practical question;" in *Bales* in 1985, "The common sense construction of the phrase 'the dwelling place of another controls';" in the *Free* case in 1983, "Common sense tells us that murder victims do not live in a vacuum and that in most cases they leave behind family members;" and in *O'Connor* in 1980 he concluded, "We believe that common sense and the above reference 'procedures for provided for resolving assessment disputes' will dissipate this otherwise fog of uncertainty."

To the day he died, Mr. Justice Ryan was a towering judicial figure because of his essential belief in those around him. Because the power of a judge is so immense, "Humility," he said, "was the hardest thing for a judge. It is most difficult as a human being not to use power. There must be a principled rule of law or there is," in his words, "no justice." It was our privilege to have known Mr. Justice Ryan, and we have each gained immeasurably from that time together. Our very system of justice, here in Illinois, remains to this day deeply indebted to him. And thank you again for the opportunity.

CHIEF JUSTICE FITZGERALD:

So ends our beautiful and touching little celebration of the lives of Howard Ryan and Joe Cunningham. Not only do they teach us by the words they have written and by their opinions that have been published, they teach us as well by the way they conducted themselves and lived their lives, and I hope we all can learn from it, particularly the present residents of the Court. With that, then, I would note that while this ends the formal part of the program, we have time to visit and meet each other for a little bit across the hallway in the appellate court courtroom. With that, then, Mr. Marshal,

the Supreme Court will stand adjourned until 9:00 a.m. tomorrow morning.

