

Nebraska Court of Appeals

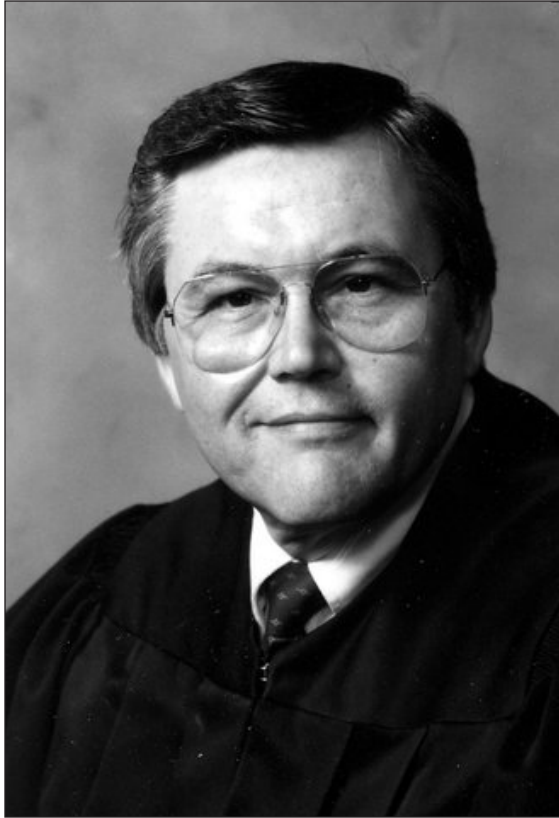
In Memoriam

JUDGE THEODORE CARLSON

Nebraska Supreme Court Courtroom
State Capitol
Lincoln, Nebraska
June 20, 2012
1:30 p.m.

Proceedings before:
COURT OF APPEALS
Chief Judge Everett O. Inbody
Judge John Irwin
Judge Richard Sievers
Judge Frankie Moore
Judge Michael W. Pirtle

In attendance:
SUPREME COURT
Chief Justice Michael G. Heavican
Justice William M. Connolly
Justice Kenneth C. Stephan
Justice Michael McCormack
Justice Lindsey Miller-Lerman
Justice William B. Cassel



JUDGE THEODORE CARLSON

Proceedings

CHIEF JUDGE INBODY: Good afternoon. The Nebraska Court of Appeals is sitting today in a special ceremonial session to honor the life and memory of our friend and colleague Judge Theodore L. Carlson. My name is Everett Inbody and I will serve as the presiding judge today. We appreciate the Nebraska Supreme Court sitting with us at this special ceremony. To my right is Chief Justice Michael Heavican. Next to him is Justice William Connolly, who is a former member of the Court of Appeals. Justice Kenneth Stephan is sitting next to him. Justice Michael McCormack is sitting with the presenters. And we will be hearing from him in a few moments. Next to Justice Stephan is Justice Lindsey Miller-Lerman, who is also a former member of the Court of Appeals, and when she was appointed to the Supreme Court, Judge Carlson took her place on our Court. Judge William Cassel is then at the end, and he formerly served on the Court of Appeals with Judge Carlson.

I would also like to introduce my colleagues on the Court of Appeals. To my left is Judge Richard Sievers. Next to him is Judge John Irwin. Next to him is Judge Frankie Moore. And then at the end on my right is Judge Michael Pirtle. Judge Pirtle was appointed to take Judge Carlson's place on our Court.

On behalf of the Court of Appeals, I express our thanks to the Supreme Court for allowing us to have this ceremony here today in their courtroom. It is always an honor to sit in this courtroom and makes this ceremonial session even more special. Several months ago, the Court of Appeals decided that we would like to have a special ceremonial session to remember Judge Carlson, and Judge Pirtle immediately volunteered to organize this ceremonial session, and I thank him for his good work.

I also want to recognize Janet Hammer — excuse me, Janet Bancroft — same person, different name —

(Laughter.)

— and the staff of the Court Administrator’s Office for their efforts behind the scenes. I appreciate all they have done and thank them for their assistance.

One of the tasks that Judge Pirtle had was to contact a person who would act as the moderator to introduce the speakers that will appear at this special proceeding. Eugene Hillman is a 1974 graduate of the Creighton School of Law and is currently a partner in the Omaha law firm of Hillman, Forman, Childers and McCormack. He has known and worked with Judge Carlson since the ’70s. We are pleased that he has agreed to serve as the moderator today. The Court recognizes Eugene Hillman.

Good afternoon.

MR. HILLMAN: Good afternoon.

CHIEF JUDGE INBODY: You may proceed whenever you’re ready.

MR. HILLMAN: Thank you.

Chief Judge, members of the Court of Appeals, and Chief Justice and members of the Supreme Court, I am indeed honored to serve as the moderator on this occasion in memory of the life and service of Judge Theodore Carlson.

Before introducing our guest speakers, I’d like to take a moment to share some of my own recollections of Judge Carlson. When I was thinking about appearing here today and on reflection, I think a description used by Northwestern head football coach, Pat Fitzgerald, applies to Judge Carlson. Last fall when he was asked by a reporter after Northwestern’s win over Ted’s beloved Cornhuskers, whether it was Northwestern’s greatest road win ever, he replied, “It’s always best to be a humble winner.” To me, that’s what Ted Carlson was, a humble winner. I don’t mean to say the Judge didn’t like to talk, because those who knew him know otherwise.

(Laughter.)

But his conversation was never about him or his doings or his decisions. And that, notwithstanding, he decided, I dare say, thousands of cases over his many years of service from minor

traffic infractions to major civil disputes and cases involving heinous crime and capital punishment.

I first met Ted Carlson when I was a young law clerk at the then firm of McCormack, Cooney, and Mooney, and he was a young judge on the Omaha Municipal Court. Even then his conversation was always directed to and about me and my family, never himself. Through the years, he was always genuinely interested in the lives and families of his friends and acquaintances. It was never about him. Let me give you an example. I went to see him in the hospital on Christmas Day, 2010. At the time, he'd been diagnosed with terminal cancer. Debbie was there, Zack was there, along with their dog, Molly, which surprised me but Molly was in the room also. After an exchange of greetings and an introduction to Molly, he said to me, "Now, you go home and be with your family." I saw him again over the next few months, but all too soon he was gone. Nebraska lost an outstanding jurist and a humble winner.

Our first speaker today is the Honorable Michael McCormack, Justice of the Nebraska Supreme Court. Justice McCormack was a law school classmate of Judge Carlson's and they were longtime close personal friends. He's been a member of the Nebraska Supreme Court since 1997, and prior to that he was a law partner of mine in the Omaha law firm of McCormack, Cooney, Mooney, Hillman, and Elder.

Justice McCormack?

JUSTICE McCORMACK: Thank you, Gene.

CHIEF JUDGE INBODY: Good afternoon, Justice McCormack.

JUSTICE McCORMACK: Judge Inbody, Chief Justice, members of the Supreme Court, members of the Court of Appeals, I am truly honored to have been asked to speak today in this memorial service for my dear friend of almost 50 years, Ted Carlson. Ted Carlson, Justice Bill Connolly, Mike Mooney, we were all classmates at Creighton Law School.

Ted was a very interesting guy. He was very outgoing. Liked to talk, as Gene said. And he was also a very bright guy. I think he graduated second in our class. I used to like to kid him, you know, that he never spent a dime on tuition.

He went to the University of Nebraska — it was University of Nebraska at Omaha then — it was University of Omaha, on a full scholarship and then he went to Creighton University Law School on a full scholarship. That's how bright he was. He was able to obtain these scholarships. He applied that throughout his career to the law business for the short time he was in it, and to his long, long judicial career. I think he was probably a judge as long as anybody in the state of Nebraska. It was over 40 years, I believe. When he was appointed, he was just over the minimum age for appointment as a judge and he was appointed as a judge in the Municipal Court in Omaha. Prior to that, when he got out of school — Teddy always liked San Francisco and he always wanted to travel and he went out to San Francisco and worked for the Bank of America as a trust officer for a while, about a year. Then he came back and he went with a law firm of Miller, Moldenhauer, and Vandenack in Omaha. I think Keith Miller is the only person in that whole firm who's still alive today. He then left there and he became a city prosecutor. And in those days down at 11th and Dodge, the Omaha Municipal Court, it was quite a place. Teddy and Gary Buchino, famed Gary Buchino, were the two prosecutors. Dick Dunning came along in there somewhere after that.

After a few years of that, Teddy, he got to know a guy by the name of Pat Cooney, who became a partner of mine at a later time. Pat Cooney was one of the campaign managers for Jim Exon. Pat really liked Teddy. He thought a lot of him. He convinced Governor Exon to appoint Ted to the Municipal Court at a very early age, I want to say 30 years old. Teddy served on the Municipal Court for several years, and then the Municipal Court was merged into the County Court. Now, his biography says he was never a county court judge, and I disagree with Janet Bancroft about that.

(Laughter.)

And the reason I remember that is that he bitched continuously about how great the benefits were with the City of Omaha — the health insurance, they paid for his Bar dues, he got to take a lot of trips to conventions and stuff — and how tight the

State was. Once he became a State employee, he didn't get any of that.

(Laughter.)

He was a county judge for a while and then Governor Kerrey appointed him to the district bench where he served for several years. He served with Judge Coffey who's going to be one of the speakers here today.

When there was an opening on the Court of Appeals, that was, I think when, Lindsey, when you were appointed to the Court — to the Supreme Court, Teddy applied for that. And Governor Nelson appointed him to that role when he joined the rest of you in serving on the Court of Appeals and he served that until the day he died.

Ted was a very outgoing person. He used that awesome intellect of his that saved him all that money of tuition. When the rest of us were working to pay tuition, he could keep his money in his pocket. He used that throughout his career to decide cases and to always be fair and honest with all the people that appeared in front of him.

I traveled extensively with Teddy. Teddy didn't get married until late in life, in his 40s. His wife, Debbie, is here today, and his brother, Jim, his son, Zack, who is in law school at Creighton University, I believe is out of the country and is not able to be here with us today. But prior to his marriage, I traveled extensively with him. On these Creighton trips, we went all over the world together.

Teddy and I had lunch almost every week at least, together, and I still find myself grabbing for a phone and I'll call up Teddy and see what he's doing for lunch. It's hard to break an old habit.

For myself and for, I think the judiciary as a whole, Debbie, we thank you. We thank you very much for sharing Teddy with us and we're all the better for it. Thank you.

CHIEF JUDGE INBODY: Thank you, Justice McCormack.
Mr. Hillman?

MR. HILLMAN: Well, first of all I have to respectfully disagree with my former partner. I think I'm right, as usual, and he's not right.

(Laughter.)

I researched the County Court System versus the Omaha Municipal Court System and according to the red books, the statutes, the County Court merged with the Municipal Court on July 1st, 1985, and I believe Judge Carlson began service as a district judge in 1983. I think Janet would agree with me.

CHIEF JUSTICE McCORMACK: Bad memory.

(Laughter.)

MR. HILLMAN: Janet would agree with me that that's what his judicial bio says.

So, our next speaker is the Honorable J. Michael Coffey. He's a judge of the District Court of Douglas County. Judge Coffey has served as a district judge for the past 14 years and prior to that was a partner in the Omaha law firm of Staube, Coffey, Schotts, Swinson, and Daugherty. While on the district bench, he served a number of months with Judge Carlson before Judge Carlson was appointed to the Court of Appeals. He, too, was a close personal friend of Judge Carlson, and I might also add that Judge Coffey is a law school classmate and a friend of mine.

Judge Coffey?

JUDGE COFFEY: Thanks, Gene.

CHIEF JUDGE INBODY: Good afternoon, Judge Coffey.

JUDGE COFFEY: Good afternoon, Judge, thanks. May it please the Court, it's hard to get rid of that.

(Laughter.)

Anyway, I'd like to acknowledge as Mike did, Debbie, Ted's brother, other members of his family, and all his friends and colleagues. I haven't known Ted as long as Judge Connolly or Judge McCormack or Mike Mooney, because they're a lot older than I am.

(Laughter.)

But I first met Ted in the summer of 1974 after I'd gotten out of law school with Gene. And by the way, we went to school together, graduated together, but there was a great distance between our rankings in the class. And I'll let you guess as to who was on top.

(Laughter.)

But I had started with Emil Sodoro's firm and that summer I had my first trial. It was a subrogation case and it was in the Municipal Court, which was in the old Elk's Building, because they were still constructing the City/County Building. The courtrooms were very small. They were latrine green. You sat at a small table. Counsel opposite each other with the judge on sort of a bench. At any rate, my opponent was another classmate of Gene and mine, Bob O'Connor, and I believe it was his first trial, too. And of course, he had the best defense you can have to a petition, which is a counterclaim. So we tried the case, and for whatever reason, O'Connor thinks — I'm sorry, I'm not used to having you behind me like this, but I apologize for that — O'Connor thinks he's a comedian. So during this trial, he starts making faces across the table at me. Things like this, and —

(Laughter.)

— I'm going, knock it off, and I don't know — this is the first time I've met Ted when I really met him and I don't know if he can see this or not, but I'm really getting nervous. We finish up and, by God, I was so relieved that Ted leaves the bench, goes into his chambers, which was a hallway five feet wide, also latrine green, about ten feet deep. And we're leaving and I'm just happier than heck and then I hear this, "Can I see counsel in chambers?" So I turn around and I start giving it to O'Connor while we're walking back. We get in, we sit down, and Ted puts his robe away and the first thing he says to us is, "Let me give you some tips." Well, obviously, that caused another moment of great relief and he did give us tips. And quite honestly, that tips session I believe lasted longer than our trial.

(Laughter.)

But from then on, Ted and I started to develop a friendship which continued until April of last year. I think part of the reason that that happened was, even though he was considerably older than I, we were both single. And we would get together occasionally and have a couple of beers and then try to find some way to meet some nice young ladies, to the point that one night in a blizzard, Ted drove the two of us to a fashion

show rehearsal in that car of his. You probably can remember the make of it, but it was huge.

MRS. CARLSON: The big blue Buick?

JUDGE COFFEY: Yes. And he's bound and determined we're going to get to Elaine Jabenis's, Jon Jabenis's mother's fashion show rehearsal. Well, we got there, and we saw a lot of ladies, but as usual, we met none.

(Laughter.)

So that's how you became a friend of Ted Carlson's. You enjoyed his company. He enjoyed yours, and as the years progressed, you just became closer to him if you were a friend. Well, our nights out about on the town changed when he met Debbie. And I knew from my experiences with him that this was a little different. And if things went the way Ted wanted, this was going to be a long-term relationship, which it was. I think that Ted's happiest day was when he married Debbie. His next happiest day was when his son, Zack, was born. I don't think I've ever seen a guy so proud and happy to be a father. That's another aspect of Ted. He was a very good husband and an extremely good father.

Now, Ted did like to talk. If you had a 10:00 hearing, you knew that you could not have anything else scheduled until 11:30. There were two reasons for this. Your 10:00 hearing wouldn't start until 10:30, and even though it was set for 15 minutes, it wouldn't end until 11:00. And if it was Nebraska football season, it wouldn't end until 11:15. Now, part of that problem is that Ted's Nebraska football season ran from September 1st of each year to August 31st of the next.

(Laughter.)

It didn't matter if you went to Notre Dame or LSU, you were going to listen to his Nebraska football stories.

Now, when he got appointed to the Court of Appeals, we were very proud of him, because I had been able — I would have the honor to serve with him for, like, six or seven months on the district bench. But the down side for Ted was that we couldn't fit him in and he wanted desperately to be in our courthouse. We couldn't find space for him. We had to put him in the City/County Building on the seventh or eighth floor

somewhere up there. And I know that the social interaction that he loved so much with the lawyers and the judges kind of ended then. He wasn't able to come over and talk to us too much, didn't see the lawyers that much, even though I think he was very proud and happy to be on that bench.

Now, his propensity for speech was quite amazing, but it was also amazing that he could do the things he did, socialize the way he did, and still manage a heavy docket, which is another aspect of Ted. He was a good and fair judge. He was a mentor to me, as I mentioned my first trial. But when I was appointed to the district court bench, he made sure that I was involved in judges' meetings where certain big issues were being decided even before I'd actually been sworn in. When I got sworn in and took my position, he was willing to answer questions, give me advice. That was another aspect of Ted. He didn't mind spending time with young lawyers and new judges.

Ted was diverse. Two of his favorite places to eat lunch were the Amarillo Barbecue joint down in Bellevue, and any Hooters that we happened to drive by.

(Laughter.)

He really loved their wings.

In closing, I will say as he would, "My friend, thanks for your friendship, your service, and the memories." Thank you.

CHIEF JUDGE INBODY: Thank you, Judge Coffey.

Mr. Hillman?

MR. HILLMAN: You know that class ranking thing that Judge Coffey referred to? Well, he won, but we were both holding up a lot of other people.

(Laughter.)

Our final speaker this afternoon is Michael Mooney. Mr. Mooney is well known I'm sure to all of you as a principal in the Omaha law firm of Gross & Welch, and before that was a law partner of mine. He, too, was a law school classmate of Judge Carlson's, and they, too, were longtime personal friends.

Mr. Mooney?

MR. MOONEY: Thank you, Gene.

CHIEF JUDGE INBODY: Good afternoon, Mr. Mooney.

MR. MOONEY: Good afternoon, Your Honor. May it please the Courts, I guess I've never said that before. Members of Judge Carlson's family, and all his friends that are here, acquaintances. I'd like to share a few memories of Ted. My first meeting with Ted was when Justice McCormack and Justice Connolly and Ted and I started what became the 1963 graduating class at Creighton University. Now, I have two sons who went to law school and they married two girls who went to law school in more modern times. And in the modern times, law school is quite different from what it was when we went to law school. For example, competition for jobs is impossible these days, and as a result, class ranking is much more important to the kids today than it was to the Creighton class of 1963. And although Judge Carlson ranked very high in our class, it spoke to his personality that he worked his way through University of Nebraska at Omaha, and I think part of the time when he was in law school, at the Stroh's Brewery delivering beer.

(Laughter.)

Ted was just an ordinary guy in law school and we had a great class. I'm sure most of you know former — or retired Dean Rod Shkolnick. Rod Shkolnick's first teaching experience in law school was the class of 1963 at Creighton University. He started teaching the year we were freshmen. And I must say, I think we did a good job of educating him. After all, he became dean.

(Laughter.)

Ted was always a good conversationalist. You heard that he was a good talker, but in the early days, before he got on the bench, he was a conversationalist. You could literally carry on a conversation with him. When he got on the bench, he was severely limited as to what he could say, mostly sustained or overruled. And I think that was the impetus for him becoming a great talker. When he wasn't on the bench, he could talk. And we all knew it and we all loved it.

He was a football fan emeritus. I mean, Nebraska football, as Judge Coffey said, was his principal hobby, talked about it constantly. A little known fact about Ted is that he kind of liked

golf at one point in his life, and I actually played golf with him one day. And it was painful.

(Laughter.)

You've all seen Jim Furyk's swing on the professional tour today which I've seen compared to the ampersand. Well, Judge Carlson had a very peculiar swing, too. And he wondered if I could help him. Well, in those days, one of the top professionals was a fellow named Julius Boros, and Julius Boros had the most beautiful slow, soft swing that propelled the ball way down the fairway. And he wrote a book, and the book was called *Swing Easy, Hit Hard*, which I had purchased and had in my library. So I thought, maybe, I could loan the book to Ted and he could learn something about golf from the book. Sometime later, I asked if he was finished because I'd like to have it back, and he said, "Yeah, I'll bring it to you." And when he did, the corners — it was a hardbound book and the corners of the book were all chewed. I suspected he did that as he tried to play golf, but he claimed the puppy caught —

(Laughter.)

Well, Ted married late in life. I think he was 49 when Zack was born, and I got to tell you, he became a great father and he's a good husband. And, you know, can you imagine at age 51 or 2 going to PTA meetings and teacher's conferences, coaching little kids in their athletics? He did it all. He was a great father. And to Ted and Debbie's credit, Zack has grown up to be a fine young man.

The Omaha Bar Association has had several folks in and associated with it who like to party. Ron Henningsen was the principal example. Threw many parties a year. Ted, maybe following that example, used to have a Christmas party at his house. He and Debbie would have a Christmas party. You all know that Ted's heritage was Swedish. Ted's mother, Florence, would make this homemade sausage that's a Swedish sausage. It's a traditional Swedish Christmas recipe and it's called potatis korv, k-o-r-v, which translated means potato sausage. I absolutely love this sausage, see. And so, years later, I talked to Ted about getting the recipe, because I started making sausage as a hobby and I got the recipe from Debbie and I've made it several times. It's just beef and pork and potatoes and

onions and salt and pepper and sometimes a little allspice. That's the whole number of ingredients. And you grind them all up, stuff it in a casing and boil it, serve it with a little mustard on a piece of bread, and it is outstanding. It's become a tradition in my family and that's one of the things that will always remind me of Judge Carlson and his wonderful mother who made that sausage.

My last experience with Judge Carlson on the judiciary was an appeal that I had from — that I was the appellant — appellee. I had won a summary judgment and the appellant was trying to get that overturned. And we came to the Court of Appeals for argument and there sat Ted on the panel. Now, our law school class started out with 52 or 3 or 4 people as I remember, and we graduated 28. As a result of that attrition, the 28 of us got pretty close to each other. We were pretty collegial. And that continued, continues to this day, especially the Omaha folks, the ones who did stay in Omaha. We still get together periodically and have lunch or maybe a cocktail or something. And Teddy was one of us. So here he is sitting on the end of the bench up here on the Court of Appeals and I'm up giving the appellee's argument and waxing eloquently when Judge Carlson interrupted me with a smile on his face that I recognized that I was about to get teased in some fashion, and he said, "Mr. Mooney, what is the appellant's best argument?" I said, "Judge, I'm not going to make the other argument for them. They've got their own lawyer." And he says, "But you got to answer the question," with that grin on his face.

(Laughter.)

I'll never forget that. It's never happened to me since, it's never happened to me before, and I've been here a few times. He let me off the hook, though.

I think the last time that I saw Teddy in person, I was coming out of my oncologist's office. I'd been in for a shot for my prostate cancer and as I was walking out, Ted was walking in. And I was shocked to see him. And of course, we spoke for a second. I said, "You got trouble, Ted?" And he said, "Yeah, I do and it's not good." Before I got back to my office, I got a phone call, Ted on the cell phone. And he told me that he'd been diagnosed with esophageal cancer and the prognosis was

not good, and he asked me if I would keep it quiet because he wasn't sure how things were going to go. So I may have been, other than his family, one of the first few people that knew about it. I think Judge McCormack knew about it before I did, but I was just shocked. And that was in November of 2010, and he was gone in April of the following year. Much too fast.

Judge Carlson was a good father, a good husband, a good man, a fair man, and a good judge. And I miss him. Thank you very much.

CHIEF JUDGE INBODY: Thank you, Mr. Mooney.

MR. HILLMAN: Thank you, Mike.

That concludes our presentation of speakers this afternoon. At this time, Judge, I'd like to move that the foregoing remarks be memorialized in the permanent records of this Court and that a copy of those records be presented to the family of Judge Theodore L. Carlson.

CHIEF JUDGE INBODY: Thank you, Mr. Hillman. The motion of Mr. Hillman is granted. Today's entire proceeding will be transcribed and copies will be distributed to the family members and to members of the bench. In addition, the entire proceeding will be published in a volume of the *Northwestern Reporter*. The *Northwestern Reporter* is a national publication that consists of several hundred volumes. All of the published cases by the state appellate courts in the seven-state area are included in the *Northwest Reporter*. This includes all of the published opinions that are written by the Nebraska Supreme Court and the Court of Appeals, including opinions written by Judge Carlson. Now, in addition to those opinions, there will be a transcript of this special ceremonial session.

Judge Carlson is the second member of the Court of Appeals to pass away while in office. Judge Wesley Mues, who passed in 1999, served with Judge Carlson for four years. By conducting this special ceremonial session to honor the life and memory of our friend and colleague, Judge Theodore L. Carlson, we know that his contributions will be memorialized for future generations.

The Court thanks all of the family and friends of Judge Carlson, in addition to the lawyers and members of the

judiciary who are here today. This will conclude this special ceremonial session to honor Judge Carlson. I would invite all of you to stay for as long as you would like to greet and visit with each other.

The special ceremonial session of the Court of Appeals is now adjourned, thank you.