

Nebraska Supreme Court

In Memoriam

JUSTICE LESLIE BOSLAUGH

Nebraska Supreme Court Courtroom
State Capitol
Lincoln, Nebraska
December 4, 2006
2:00 p.m.

Proceedings before:

SUPREME COURT

Chief Justice Michael G. Heavican

Justice John F. Wright

Justice William M. Connolly

Justice John M. Gerrard

Justice Kenneth C. Stephan

Justice Michael McCormack

Justice Lindsey Miller-Lerman



JUSTICE LESLIE BOSLAUGH

Proceedings

CHIEF JUSTICE HEAVICAN: Good afternoon. The Nebraska Supreme Court is meeting in special ceremonial session on this 4th day of December, 2006, to honor the life and memory of Former Supreme Court Justice Leslie Boslaugh and to note his many contributions to the legal profession.

I would like to take this opportunity to introduce you to my colleagues on the Supreme Court. Beginning to my far left is Justice Lindsey Miller-Lerman. Justice Kenneth Stephan is next to Justice Miller-Lerman, and next to Justice Stephan is Justice William Connolly. To my far right is Justice Michael McCormack. Next to Justice McCormack is Justice John Gerrard, and to my immediate right is Justice John Wright.

The Court further acknowledges the presence of Justice Boslaugh's wife, Betty; son, Paul and his wife Eileen Boslaugh, and their son Max and twin daughters. Justice Boslaugh's daughters and sons-in-law, Sarah Boslaugh and Daniel Peck and Marguerite Boslaugh and David Guadliana were unable to attend today.

The Court also acknowledges the presence of other members of the family and friends of former Supreme Court Justice Boslaugh.

Also present are former members of the Nebraska Supreme Court, members of the Nebraska Court of Appeals, and other members of the judiciary and members of the bar.

At this time the Court recognizes Former Nebraska Supreme Court Chief Justice William C. Hastings, Chairman of the Supreme Court's Memorial Committee, who will conduct these proceedings.

Mr. Chief Justice, good afternoon.

CHIEF JUSTICE HASTINGS: Good afternoon. If it please the Court, William Hastings, Chair of Special Supreme Court Committee, memorializing Judge Leslie Boslaugh.

The members of my committee are C. Thomas White, Chief Justice, Retired, of this Court; John G. Grant, Judge Retired of this Court; James Hewitt, Wesleyan University Professor and attorney; and D. Nick Caporale, Retired Judge of this Court. They will each be called upon to recall their remembrances of Judge Boslaugh.

Leslie Boslaugh was born in Hastings, Nebraska, on September 14, 1916, and died in Lincoln on February 16, 2006. He is survived by his wife, Elizabeth; daughters Marguerite and her husband David Guadliana, Sarah and her husband Daniel Peck; and Paul and wife Eileen, grandson Maxwell Joseph and twin granddaughters Rachael Leslie and Andrea Genevieve.

Judge Boslaugh graduated from the University of Nebraska College of Law, cum laude, was a member of Phi Kappa Psi Fraternity and a 33rd degree Scottish Rite Mason. He served during World War II in the United States Army Field Artillery in Germany. He practiced law in Hastings and later in Lincoln with the Attorney General's Office.

Judge Boslaugh was elected to this Court in 1961. He served until his retirement in 1994, having served on the Court for a total of 33 years, longer than any other judge except for Judges William Rose and Edward Carter. His services were distinct in that he was one of the last judges of this Court to have been elected by open ballot or popular ballot and the only judge to have succeeded his father on the bench.

At this time please permit me to present C. Thomas White, Chief Justice, Retired.

CHIEF JUSTICE HEAVICAN: Thank you.

CHIEF JUSTICE WHITE: May it please the Court, I first met Judge Leslie Boslaugh in 1966 or thereabouts when as a District Judge I was privileged to sit with the Supreme Court for a week, hearing, as I remember, a series of property tax appeals.

In that week I formed an impression of him, a giant of a man, a towering intellect, courtly, friendly and genuinely interested in your thoughts, your experiences and your opinions.

Over the succeeding years I grew to know him better, and my earlier judgments were confirmed.

In his approach to the law, Les understood the majesty of the common law, that that which is fixed should be followed, but he

also believed, as did Holmes, that the law was based on experience and not logic. He recognized that the law was for the living and change was at times both desirable and necessary. His dedication to the law was one of respect, almost reverence. Lincoln wrote, "Let reverence for the law be taught by every American mother to the child that prattles in her lap. Let it be taught in schools, in seminaries and in colleges. Let it be written in primers, spelling books and in almanacs. Let it be preached from the pulpit, proclaimed in fine legislative halls and enforced in the courts of justice. And in short let it become the political religion of the nation."

Les's approach to the role as appellate judge was to compose an opinion, carefully crafted to decide this case and not another, and to leave for another day an issue not yet discussed, briefed or argued. His words on presentation of opinion that he deemed too long and inclusive was, "I apologize for the length of the opinion. I didn't have time to write a short one."

Judge Boslaugh's interests went far beyond his devotion to his law career, his interest in military history due to his World War II role as an artillery man. His colleague Chief Justice William Hastings, also a cannoneer, frequently discussed their experience. I was an avid listener, as only an office soldier could be fascinated. He lies buried among his fellow warriors.

Judge Boslaugh was proud of his family, and his love of them shone when he was in their presence.

His encyclopedic knowledge of American railroads was inspiring. I had a limited knowledge in my boyhood as a gandy dancer and he required of me to tell all the aspects to add to his warehouse of facts. A gandy dancer is somebody who works on railroad tracks.

Judge Boslaugh was again of the group with which I served, a man for all seasons. We will not see his — soon see his like again.

Robert Louis Stevenson's poem is of comfort.

“Under a wild and starry sky
Dig the grave and let me lie
Gladly did I live, and gladly die
And I lay me down with a will
And this the verse you grave for me

Here he lies where he longed to be
Home is the sailor home from the sea
and the hunter home from the hill.”

I thank the Court for permitting me to speak.

CHIEF JUSTICE HEAVICAN: Thank you.

CHIEF JUSTICE HASTINGS: May I introduce John G. Grant, Retired Judge of this Court.

CHIEF JUSTICE HEAVICAN: Thank you.

JUSTICE GRANT: May it please the Court, I used to jump up and run up here but them days is gone.

I'm extremely pleased to be here, and I don't have much to add to what Tom and these other learned guys are going to say, but I had to tell you this one story. About the first day I was on the Court we were going, walking to lunch, and school let out. I turned around this way. I don't know where it is. And he knew I was a Catholic and he said, "My goodness, those Catholic kids are sure noisy," he said. So I knew I had a friend and from then on I was a great pal to him. He was just a dear, dear, friend and just not too solemn and yet wise as an owl, and I loved him and I want to extend my condolences, belated, to his family, but he's a great man and I hope everybody knows that. Thank you very much.

CHIEF JUSTICE HEAVICAN: Thank you, Judge Grant.

CHIEF JUSTICE HASTINGS: May I present at this time James Hewitt, Professor at Wesleyan University and a lawyer.

CHIEF JUSTICE HEAVICAN: You may indeed. Thank you. Mr. Hewitt.

MR. JAMES HEWITT: May it please the Court, I'm exceptionally happy to be here this afternoon to tell you a few things about Les Boslaugh, whom I revered and enjoyed for 50 years.

I graduated from law school in 1956. I had an Air Force ROTC commission and I was going to be called to active duty sometime after the first of 1957. I needed a job. I needed to do something and Lester Stiner and Leslie Boslaugh, lawyers in Hastings, practicing together, who were longtime friends of our family, offered me the opportunity to be an associate in their office during this span of time before I was called up to active duty.

I enjoyed it very much. I learned a great deal from both of them. One of the things that I learned was in October of 1956 —

I remember it very clearly — I came back to the office after lunch and neither Mr. Stiner nor Judge Boslaugh were there. I didn't know if they had a hearing that afternoon or if I had forgotten something that they were going to do.

I stayed in the office pretty much all afternoon doing meaningful work. I think I was probably filing advance sheets or something of that kind, but in any event I stayed in the office all afternoon, not knowing where they were, until late in the afternoon when they both returned to the office and advised me that on that particular day Don Larsen had pitched the first perfect game ever pitched in a World Series. I don't know what I learned from that except that partners in law firms and associates function on a significantly different level.

During the fall of 1956 the United States was engaged in a presidential campaign. Dwight Eisenhower, who was then president, was running against his challenger for the second time, Adlai Stevenson. Leslie Boslaugh was an official in the Adams County Republican Party and he worked very diligently to bring about the reelection of President Eisenhower.

In that particular fall, the Big 10 high school athletic conference held its championship football game at Hastings High School. They played at Hastings College but it was Hastings against McCook for the championship and Judge Boslaugh this time invited me to go to the game with him and we did. It was an afternoon game and we went out there. And we ran into Frank Morrison who subsequently became the Governor of Nebraska, who was a Democratic activist to the Nth degree, and Jerry Whelan who was Lieutenant Governor during the Exon administration and another Democratic activist.

These people had been fighting each other tooth and nail over the election of Dwight Eisenhower or Adlai Stevenson, and yet I stood and watched as they laughed and joked and had a wonderful time visiting with each other throughout the course of the afternoon. It taught me that it is quite, quite possible for people to compete, for people to be against each other vigorously and still retain a wonderful respect and regard for each other and to enjoy each other's company.

After Judge Boslaugh came to this Court and I came back from the service, I frequently came to see him in his office.

Things were different at the Court then. There weren't any bomb threats. There weren't any of the things that you walk through, the metal detectors. There was no glass wall in the clerk's office where you pass your papers through like you were buying something in a cheap liquor store. It was very different. I would come in and sit down and chat with the judge and he would tell me stories and we would have a good time and I learned another lesson. He had books piled all the way across his couch and I realized that it was possible to be a success even if you had a messy office.

I — when I was considering an important career change of my own from private practice to working in a corporate situation, I came to see the judge, talked to him at some length. I came several times. He asked me searching questions. He focused on a number of issues and made me decide the issue for myself. I learned the lesson then that a good friend can be invaluable in dealing with major challenges in your life.

In the 1970s I was elected by the lawyers of Nebraska to be the state delegate to the House of Delegates of the American Bar Association. After a while while I had served in that post I was invited to go to Minden, Nebraska, to a meeting of the 10th Judicial District Bar Association and to tell them what I thought the ABA was up to. Judge Boslaugh knew that I was going and he called me and asked if he could ride along and I said I would love to have him, and we had a great visit on the way out and on the way back.

This was shortly after a former member of this Court had had some difficulty in an automobile situation. It was not any of the judges who are here today. But in any event, it was a difficult situation and I was interested in trying to find out more than I knew about it. I used every bit of cross-examination skill that I had to try and elicit the information from Judge Boslaugh and he handled it very nicely and I did not learn a single thing. The thing I did learn, however, was that a good judge treats the business of the Court as privileged and confidential no matter to whom he or she is talking.

I also learned from watching Judge Boslaugh in his intersection with the lawyers of the 10th Judicial District where he had lived and worked for a long time that it is quite possible for

lawyers and judges to eat and meet and break bread and drink and enjoy each other without their respect for each other diminishing in any sense of the word.

During the 1970s when Jerry Whelan was the Lieutenant Governor in the Exon administration, he and Judge Boslaugh and I would frequently meet at the University Club for lunch. That was one of Judge Boslaugh's favorite haunts and we would have clam chowder and we would talk about what was going on in business and industry and in the law. And I learned that judges do not check their interest in community life, in contemporary life at the door when they reach the bench.

As you can see, I have learned a great deal from Judge Boslaugh over a long span of time, but the lessons he taught me were not confined to me. Over the years, both as a lawyer and as a judge, Leslie Boslaugh served as a shining example of what is good in a man and in a servant of the law.

We hear a lot these days about parties, about groups having a big tent. Leslie Boslaugh's tent was immense. He did not discriminate. All who wanted to learn were welcome to learn what he had to teach, and hundreds of Nebraska's lawyers and judges benefited from his example.

I can think of no finer epitaph. Thank you very much.

CHIEF JUSTICE HEAVICAN: Thank you, Mr. Hewitt.

CHIEF JUSTICE HASTINGS: May I present D. Nick Caporale, Retired Judge of this Court.

CHIEF JUSTICE HEAVICAN: Yes, you may. Judge Caporale.

JUSTICE CAPORALE: May it please the Court. Though there's not much new that can be said concerning the nature of Judge Boslaugh and his contributions to the jurisprudence of this state, I am nonetheless grateful for the opportunity to say a few words about this talented and unusual man, a man whom I respected, admired and who by example taught me a great deal about appellate judging.

Here are a few of the things for which I remember him the most.

I remember him for his calming and leveling influence on the Court. I remember an occasion during my freshman period as a member of this body when I was arguing, rather passionately I think, my view of the law to Judge Boslaugh. He listened

quietly for a time and then said, “Judge Caporale” — and as many here know, when judges call each other by title, idle chitchat has ended and serious business is at hand — and then he calmly said, “I’m not trying to convert you. I’m simply trying to explain my point of view.” My response, of course, was, “But I am trying to convert you.” I don’t remember what the issue was. I do remember I did not succeed.

I remember him for his compassion and his politeness. Though he never shied away from a harsh result when the law required a harsh result, you could nonetheless sometimes discern that he was discomforted by having to do what had to be done.

He was unfailingly polite. He didn’t ask many questions during oral argument because experience had taught him, as he once observed, that if you simply wait, the lawyers will tell you what you need to know.

When he did ask a question, it was a crucial one and it was nearly always at the end of the lawyer’s presentation. And I know what some of you are thinking, but remember my observation was that he taught many lessons, not that they were all taken.

He had one of the most inquisitive minds I’ve ever encountered. He was well-read and well-versed about virtually everything. And if an occasion presented itself when he was not as well-versed as he would like to have been, you can rest assured that the next time the topic came up, he would be. This was true whether you were talking about the law or carpentry or food or finance and most especially railroads.

He had one of the most organized minds and disheveled offices I have ever seen. As has been alluded before, there were books and piles of paper on the desk, on the couch and on the chairs. When you came in he was always cordial and asked you to sit. Fulfilling that requirement sometimes presented a challenge.

And I said that his office was disheveled, not disorganized, and that distinction I think is illustrated by an occasion when I needed to look to a rather antiquated version of the Code of Professional Conduct and happened to mention during our coffee meeting that morning that I was having difficulty locating it and Les said, “You know, I think I’ve got that.” And so we went to his office, he selected a pile of papers on his desk and on his

first archeological dig came within three or four sheets of where we needed to be. It was an amazing feat, worthy of Houdini.

I remember him, too, because he seldom said anything bad about anyone. About the harshest comment I remember is that occasionally he would observe that if you could buy so-and-so for what he was actually worth and sell him for what he thought he was worth, you would do very well indeed.

The exact opposite was true of Les Boslaugh. We were privileged to have him walk among us and I am uneasy by the fact that he no longer does so. Thank you.

CHIEF JUSTICE HEAVICAN: Thank you, Judge Caporale.

CHIEF JUSTICE HASTINGS: Les was my very good friend. We first became really acquainted when I was serving as a judge of the District Court for Lancaster County. We were both members of the Judicial Qualification Commission which meant frequently we would have lunch together, always at the University Club because they had linen tableclothes and napkins. He hated the paper variety.

He would never let me reimburse him so in defense of my own integrity, I finally joined the Nebraska Club which presented similar niceties and equally good food.

In addition to possessing skills as a judge, he had those as a plumber, carpentry, model train building. He was a real railroad enthusiast. He knew about every train in Nebraska by its number; that is, he would not say that was the westbound Denver train, but that's No. 8.

His son Paul works for the railroad and they shared their love of the rails which was a great joy to the judge.

Besides being a great legal scholar, his years of service on the Court permitted him to have outstanding institutional memory, which I'm sure you've all found has been invaluable in discussing and deciding cases.

He was a great judge and we all miss him. On behalf of my committee I thank you for the privilege we've had of being here today. Thank you.

CHIEF JUSTICE HEAVICAN: Thank you, Former Chief Justice William Hastings.

I take this final opportunity to note for those present that this entire proceeding has been memorialized by the court reporter

who today is Sue Wurm, and we want to thank her. After these proceedings have been transcribed by the court reporter, copies will be distributed to family members and those of you who have spoken on behalf of Justice Boslaugh. We will also forward a copy of the transcription to West Publishing for inclusion in its Northwest Reporter.

On behalf of the Nebraska Supreme Court, I extend its appreciation to Former Chief Justice William C. Hastings who chaired the Court's Memorial Committee, who, with the assistance of Janet Bancroft from the Court Administrator's Office is primarily responsible for organizing this ceremonial session.

This concludes the special ceremonial session of the Nebraska Supreme Court. The Court would encourage any of the participants, family members and friends of Justice Leslie Boslaugh to remain in the courtroom for a moment to greet each other on this occasion. I thank you all for attending. We are adjourned.

(Ceremonial session adjourned at 2:56 p.m.)