

Nebraska Supreme Court

In Memoriam

JUSTICE DALE E. FAHRNBRUCH

Nebraska Supreme Court Courtroom
State Capitol
Lincoln, Nebraska
November 8, 2005
2:00 p.m.

Proceedings before:

SUPREME COURT

Chief Justice John V. Hendry

Justice John F. Wright

Justice William M. Connolly

Justice John M. Gerrard

Justice Kenneth C. Stephan

Justice Michael McCormack



JUSTICE DALE E. FAHRNBRUCH

Proceedings

CHIEF JUSTICE HENDRY: Good afternoon.

The Nebraska Supreme Court is meeting in special ceremonial session on this 8th day of November 2005 to honor the life and memory of former Supreme Court Justice Dale E. Fahrnbruch 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 at my far left is Justice Kenneth Stephan. 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. Justice Lindsey Miller-Lerman was unable to attend.

The Court further acknowledges the presence of members of Justice Dale Fahrnbruch's family, other members of the judiciary, members of the bar and friends of former Supreme Court Justice Fahrnbruch.

At this time the Court recognizes former Nebraska Supreme Court Chief Justice C. Thomas White, the chairman of the Supreme Court's Memorial Committee who will conduct these proceedings.

Mr. Chief Justice, good afternoon.

CHIEF JUSTICE WHITE: Good afternoon.

May it please the Court, the Supreme Court of Nebraska has a long tradition of remembering the service and noting the passing of former members of this Court. We have met to fulfill that solemn obligation. Indeed we could do no less. Each of you know that the duties of the office of Judge of the Supreme Court, the duties are enormous and at the same time both heavy and when done with devotion to the law, light and fulfilling.

To discharge that obligation of remembrance, three colleagues of Judge Fahrnbruch at various stages of his career will speak to you. My first speaker is the Honorable D. Nick Caporale, former

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Judge of the District Court and Judge of the Supreme Court of Nebraska.

CHIEF JUSTICE HENDRY: Thank you. Good afternoon, Judge Caporale.

JUSTICE CAPORALE: Your honors.

May it please the Court, it's my honored privilege to address this tribunal in memory of the life of one of its former members, Dale Eugene Fahrnbruch. I pronounce it that way because I don't think I ever knew his middle name was Eugene.

Before I do that, however, I've been handed a letter from former Chief Justice Hastings who has sent a much more attractive representative in the person of his daughter Pamela. With the Court's permission I would read that letter.

CHIEF JUSTICE HENDRY: Yes, please.

JUSTICE CAPORALE: "I just returned home from the hospital this weekend after spending most of last week battling pneumonia and found the announcement of the memorial service for Judge Fahrnbruch. Normally I would be there, but still am so weak that I haven't yet strayed from the house. Nevertheless, I would be pleased to add a few words of tribute if it would please the court to receive them.

Dale and I served together for about seven years on the District Court for Lancaster County and again nearly eight years on the Supreme Court. Dale was a brilliant lawyer and brought that legal expertise with him to both courts. He was logical in his analysis of a problem, conscientious and dependable in all of his work. He contributed greatly to the judicial history of the State of Nebraska.

My very best wishes to you and the Court. William C. Hastings."

Because all of us are products of our experiences, it appears appropriate to reflect a bit on the road that brought Judge Fahrnbruch to this bench.

He was born in Lincoln. He was the youngest of three sons of parents of German stock. Though he attended a Lutheran grade school for a time, he was essentially a product of the Lincoln

Public School system, having attended Clinton grade school and having graduated from Lincoln High School.

During his time at Lincoln High he developed an interest in photography and journalism. A deep enough interest that he started working part time on the night staff of the Lincoln Journal.

On graduating from high school, he entered the University of Nebraska's School of Journalism. However, World War II came along and interrupted his studies. He volunteered for the Army and served throughout that war, spending much of his time in the Philippines as a cryptographer. Upon being discharged, he returned to the University of Nebraska and received an associate degree in journalism.

He then entered what was the four-year program at the University of Nebraska's College of Law. He didn't do that, however, with the thought of becoming a practicing lawyer, but because he thought a degree in law would help him in his journalistic pursuits.

After receiving a bachelor of science in law at the end of the second year, he learned he could complete his professional bachelor of law degree at Creighton University in one additional year rather than the two additional years the University of Nebraska would have required, so, being ever frugal, he transferred to Creighton.

That had a fortunate and very happy unintended consequence, for it was there that he met his future wife, Margaret Hunt, who would become one of the few women lawyers of that day. Together they had two children, their daughter, Becky, and son, Dan, who predeceased his parents in death.

On graduating from Creighton and being admitted to the bar, Dale returned to the Lincoln Journal and became city editor. During that period he helped the Journal win a Pulitzer Prize through his writings on Nebraska's election system.

But as is its wont, the law continued to exert its pull and he left the news business to join the Lancaster County Attorney's Office where he worked his way up to Chief Deputy. He left the County Attorney's office to engage in the full practice of law as a private practitioner where his work was such that he earned an appointment to the Lancaster County District Court.

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It soon became very clear to those who appeared before him that District Judge Fahrnbruch intended to be and was at all times in firm control of the proceedings before him. There were indeed two sides to the bench. Those in front of it were expected to behave professionally and courteously and respectfully not only with regard to the Court but with regard to the parties, with regard to the witnesses and most especially with regard to opposing counsel. The rules of law and the code of professional conduct were firmly, albeit politely, enforced by the man sitting behind the bench.

It was Judge Fahrnbruch's obvious commitment to his rule of law, his fairness and his thoughtful study and knowledge of the cases before him which earned the respect of the bar. It also became quickly apparent, however, that Judge Fahrnbruch had not checked his journalistic credentials at the courthouse door. Lawyers who presented documents for his signature knew that not only would their legal work be reviewed, so would their grammar and punctuation, and that all things were subject to revision and correction.

During the period that he served as a member of the district bench he earned a master of law in judicial administration from the University of Virginia. Shortly after graduating, he was appointed to this Court. In the nine years that he served this Court, he earned a reputation for careful and timely scholarship.

Because he was the quintessential quiet and private man, it was not easy to get to know Dale. But one soon learned that if the time was taken to discover the man, he was a man worth knowing and through whom much could be learned.

In keeping with his reserved nature, he never said more in our consultations than needed to be said, never used more words to say what needed to be said than were required to say. It would be a mistake, however, to conclude that because he was quiet, he was not committed to what he understood the law to be. While he listened respectfully and considered carefully the thoughts and opinions of his colleagues, unless he had been persuaded that his view of the law was wrong, he held fast.

Throughout he was considerate, he was fair, he was studious and he was even-tempered. Though he made no display of it, he

cared deeply about the people around him and those at a distance who would be affected by the Court's judgments.

Notwithstanding that compassion, when a difficult vote, popular or unpopular was required, he cast it. He cast it unflinchingly, he cast it without apology and having cast it, he moved on.

In short, Dale was a man of principle and impeccable integrity not only in his roles as judge but in all aspects of his life. To be in his presence was to know that one was in the presence of someone who stood for something and who knew for what he stood.

The juris prudence of this state has benefited because of his service as public and private practitioner of the law, by his service as a trial judge and most especially by his contributions to the work of this Court.

In commemoration of those contributions, I respectfully move that the foregoing comments be made a part of the records of this Court.

CHIEF JUSTICE HENDRY: And we shall. Thank you.

CHIEF JUSTICE WHITE: May it please the Court, the next speaker will be Judge Earl Witthoff, a District Judge of the State of Nebraska in and for the County of Lancaster.

CHIEF JUSTICE HENDRY: Thank you. Judge Witthoff. Good afternoon.

HONORABLE EARL J. WITTHOFF: Good afternoon.

May it please the Court. I was asked to talk a little bit about Judge Fahrnbruch's life as I recall it both as a friend and as a District Court Judge.

Judge Fahrnbruch became a District Judge in 1987 and he served in that capacity until 1996. When Judge Fahrnbruch became Justice Fahrnbruch I took his seat on the District Court bench. I was always grateful to Dale for creating that opportunity for me by moving up the ladder.

I first met Dale in the summer of 1964, some 40 years ago. I was a young lawyer just finishing my tour of duty in the Army and had not practiced a day in my life when I interviewed for the

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job. It was the only time I can remember that there were more jobs than lawyers.

Judge Fahrnbruch had a good practice in Lincoln at that time and agreed to talk to me. He was very courteous and considerate. He explained his practice and what would be expected of me if I worked for him. I always suspected that the interview was in part a quiz.

Halfway through the interview one of Dale's clients called and asked him a question about Colorado law. Dale asked me where I would go for a quick answer to the problem. I gave him the general thinking at the time which was either an encyclopedia or perhaps a trip to the library. This is, of course, before we had computers and the age of computers. Dale pointed out to me that Martindale was more than a list of lawyers but also had a summary of different laws of the states by topic, and this was certainly a practical tip that I appreciated.

I was exposed to other aspects of Dale's personality over the years. One was his sense of humor. I recall a court reporter who had gotten a divorce earlier and forgotten to have her name changed. She was a slim young lady and sort of shy and sensitive about her weight. When her lawyer asked her the usual questions, she gave the usual answers; such as you are not doing this to avoid predators, are you, and of course the answer was no, and he concluded by saying, by the way, I only have one more question, how much do you weigh? She objected to the question her own lawyer had asked her. She was sitting on the bench. And Judge Fahrnbruch, having been tipped off in advance, graciously sustained her objection.

Dale tried to stop smoking on a number of occasions. He finally succeeded in doing it. However, he was always careful if someone asked if he had stopped smoking to say, no, he had only suspended smoking.

As a district judge Dale took a great deal of pride in his sense of justice. Lawyers who practiced in front of him at that time will recall that he had a case involving the value of real estate. It was in a divorce case and the husband insisted that for various reasons the real estate had no value but that he wanted it. Well, when the decision came down, Judge Fahrnbruch assigned the land no value as the husband had requested but gave the land to

the wife. The old adage of being careful what you asked for came to mind.

Judge Fahrnbruch took pride, as has been pointed out, in the wording of his decrees. He was a wordsmith and a very careful one. I suspect this came from his experience which Judge Caporale discussed as a city editor for the Lincoln Journal. He had a tendency to grammatically correct the wording of even default decrees that were submitted to him. He was very careful in the content of the decree as well.

He received a masters of law from the University of Virginia in Charlottesville and was very proud of that and the work that it took to accomplish that.

His record on cases that he decided in the District Court was a very enviable one. Few were appealed but the ones that were appealed, he was affirmed 70 times, sometimes approved as modified, very seldom, only had 10 cases that were reversed. I think a record that any of us would envy.

In his personal life, Dale was a family man. He enjoyed his family and his friends at his cabin first in Fremont and then near Central City, Nebraska. He spent weekends with Marge, his wife, at the cabin. The tragic death of his son, Dan, took a terrible toll on both Marge and Dale. He always was a supportive father to both his son, Dan, and his daughter, Rebecca.

Dale will be missed as a good friend and a respected jurist. Thank you.

CHIEF JUSTICE HENDRY: Thank you.

CHIEF JUSTICE WHITE: Our third and final speaker is Mr. Ronald Lahn timers, Administrative Law Judge of the Social Security Administration and former United States District Attorney. Mr. Lahners.

CHIEF JUSTICE HENDRY: Thank you. Mr. Lahners, good afternoon.

HONORABLE RONALD D. LAHNERS: Good afternoon, sir. Good afternoon.

May it please the Court, as the last speaker you may hear some things again, but in any event, hopefully it will be something that may be worthwhile.

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I'm honored to have this opportunity to pay respect to Dale Fahrnbruch, who is a member of this honorable court.

As was mentioned, as a young man Dale was in the United States Army from 1942 until 1946, when the war ended. It's kind of interesting, as many veterans at that time, they didn't talk very much about what went on. One story that there was attributed at that time that occurred while he was in the service, however, was that they were unloading some cargo from one of the ships that had come into the Philippines and he noticed the Philippine workers were kind of all upset. So they got an interpreter over and come to find out, one of the people who was doing the unloading of the cargo happened to be a Japanese soldier so they had an instant POW at that time.

The other thing that happened while he was there was that he didn't forget the Lincoln Journal. He sent pictures and he sent articles back to the Lincoln Journal for printing while he was in the service.

He had started working for the Lincoln Journal actually when he was 16 years old and had kept up that all through the time that he was in law school and until after he got out of law school for a period of time. As has been mentioned, he managed to figure out a way to cut that two and four plan into two and three and certainly that's exactly the type of thing that you would think that Dale would be on top of and get accomplished.

In 1952 when he joined the County Attorney's Office, the County Attorney at that time was a fellow called Fritz Wagner, and Fritz had a very definite impression on Dale and persuaded him to come to work for the County Attorney's Office and convinced him to apply his trade as a lawyer instead of a journalist.

When Fritz then ran for governor, at that time Elmer Scheele was elected to the position of County Attorney and Dale became his Chief Deputy. And as Chief Deputy, his duties were pretty expansive. I don't think Elmer particularly liked managing an office too much, so guess who? Dale got the call. He was in complete managerial control of the office. He did the administration, he did the hiring, and along the way he managed to try several major cases as well.

In one of those cases he tried a case against a fellow by the name of Paul Douglas who represented a fellow by the name of

Ramon Tapia who was involved in some prison riots here in Lincoln, Nebraska. Dale was kind of impressed and was sufficiently impressed with the talent of Mr. Douglas that he persuaded Mr. Douglas to join the County Attorney's Office at that time.

Well, within a short period thereafter, Elmer Scheele was elected to the District Court bench and of course at that time we didn't have the Missouri plan. We were still under the elected terms, and Paul was convinced, with Dale's assistance, to become a candidate for the remaining two years of Elmer's term.

As I understand what had happened, Dale went in and talked to Elmer and said, I'm going into private practice. I will, you know, see you around. And the same afternoon Paul went in to see Elmer and said, I think I'm going to be leaving, I've got a job opportunity in California, at which time Elmer got both of them together and says, you can't do this to me. And Paul was persuaded to stay and Dale went into private practice with the law firm of Beynan, Hecht and Fahrnbruch.

Several events that have been mentioned happened during this period of time in his personal life. He married Margaret Hunt, who was a law school librarian, and Dale and Marge had their first child, Becky, in 1956 and Dale's life changed somewhat at that time. He quit playing golf, for instance. He became a very concerned parent and family man and when Dale left the Beynan, Hecht and Fahrnbruch position after numerous years, he then went to the District Court bench.

Now, the District Court bench was something that Dale was very proud of to be appointed to, and during those time periods in between '59 and when he was actually appointed to the bench in late 19 — I believe it was December of 1972, a second child had been born with Dan in 1963. Dale's family was a very, very important part of his life.

I remember a couple of cases that Dale tried that had some particular significance, I thought, at the time. There was a band leader by the name of Les Elgart, and Les Elgart got caught in Lincoln, Nebraska, with a quantity of marijuana. And so Mr. Douglas, of course, as County Attorney at that time, was the prosecutor and Dale ended up defending Mr. Elgart. Some of the calls that Dale got during that time included a call from Jackie

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Gleason that he would be happy to come to Lincoln, Nebraska, on Mr. Elgart's behalf and testify for him.

However, that never, ever came about because Dale, as you know, was a student of the law. He found a very recent decision of the United States Supreme Court that said that the manner in which the marijuana was seized was illegal, and he proceeded to convince Mr. Douglas to dismiss the case against Mr. Elgart, so he won one at that point.

Now, what's not commonly known, however, was that after that occurred, Les Elgart stiffed him on the fee. Now, you can imagine somebody like Paul Douglas having that information and sort of maybe rubbing it in a little bit with Dale from time to time, but in any event, it caused Dale to pursue that matter to the extent that he got a judgment, he finally located Mr. Elgart, he transferred the judgment to another state and at that time managed to get his fee from Mr. Elgart for his representation.

The second case that I remember pretty well was one that I tried against Dale when he was in private practice. It was a motor vehicle homicide case. It was a very interesting case and it was a tough case. And during the course of the trial I noticed that Dale never changed his suit. He wore the same suit every day.

Well, he won the case, number two for Dale. And so I went over to congratulate him at the end of the trial and I said, "Dale," I said, "I do have one question," I said, "You know, why did you wear the same suit every day?" I thought maybe I was missing something.

And he said, "Well, Ron," he says, "it was sort of like, you know, you hear these people that are engaged in sports they don't change their socks as long as they are continuing to win." and I must have looked at him rather incredulously and he looked back up at me and he said, "Well, it worked, didn't it?"

When Dale became a District Judge in December of '72, I had the occasion to try numerous cases in front of Dale. From a trial lawyer's viewpoint, let me say that he was a trial lawyer's judge. He knew the law. He decided objections, instructions equally, both sides, without favoritism, right down the middle, and regardless of the type of case or the type of persons who were in front of him, they got that exact same fair justice.

The other thing was that you were always welcome in his office. I went up to his office on numerous occasions, being the County Attorney at the time, and the coffee pot was always on. He always loved to sit and chat with you. He loved to talk about the law. He loved to talk about his family.

And as Earl had indicated, he was having a little trouble quitting smoking about that time because Dale only smoked two or three packs of cigarettes a day, you understand, but he finally did. And maybe some of the members of the Court may have remembered subsequent thereto that Dale used to chew a little gum and he'd just chew the devil out of that gum, but he did quit after he went back and got his master's back East.

He was appointed to the Supreme Court in '87 by Governor Kay Orr and when that occurred, it was a real major goal of his professional career. That was exceptionally pleasing to Dale.

As has been mentioned along life's way he had some disappointments. His son, Dan, was killed in 1984. Dan had kind of followed in Dale's footsteps as a Deputy County Attorney and was a Deputy County Attorney in Lancaster County at the time of his death.

As someone who is devoted to family life such as Dale, he took that death very hard, but the other thing that you also saw if you were around him was that he then even cherished his wife, Marge, and his daughter, Becky, all the more.

Some personal observations that I have: He loved his family very, very much. He enjoyed his cabin at Fremont and later at Central City. He enjoyed spending time there with his family and with his friends. Actually he had a very good sense of humor and he really enjoyed a good story.

Some thought of him as a quiet man. I didn't really see him in that particular circumstance too often. It seemed like when he was the most quiet was when Douglas and Ardis and Marge got together and the poor guy couldn't get a word in edgewise.

Dale was a true friend. If you had been his friend, you were always going to be his friend. And regardless of what occurred, he was your friend. He was a good friend of mine and I think there are many here who will miss him.

CHIEF JUSTICE HENDRY: Thank you, Mr. Lahners.

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CHIEF JUSTICE WHITE: If I may be indulged for a moment, I would like to take this opportunity to remember my colleague of many years. He was attentive in the proceedings before the Court. He was knowledgeable in the law, fully conversant with the facts and conscious always of his obligation to do justice within the law. These are my memories of my friend Dale Fahrnbruch.

He was, however, many other things, student, journalist, scholar, lawyer, advocate judge, husband, father and friend. We rightly honor his life and mourn his passing.

I wish to thank the Court for the honor it bestowed on me and the other speakers in permitting us to participate in this solemn occasion and I move to record these proceedings, that these proceedings be transcribed and a copy be placed in the archives of this Court and a copy presented to his family.

CHIEF JUSTICE HENDRY: All right. Thank you, Mr. Chief Justice.

CHIEF JUSTICE WHITE: This completes our presentation, Mr. Chief Justice.

CHIEF JUSTICE HENDRY: Thank you. Let me take just a moment to recognize for the record, which we are making here this afternoon, others present that I see in the audience who are here to help us honor Justice Fahrnbruch. I see Judge Rett Inbody, who is the Chief Judge of the Nebraska Court of Appeals is with us this afternoon; Federal District Judge Warren Urbom; Steve Willborn, the Dean of the University of Nebraska College of Law; our Reporter of Decisions, Peggy Polacek; our State Court Administrator, Janice Walker; former Attorney General Paul Douglas; and Administrative Assistants of the Supreme Court, Bette Johnson, Jackie Hladik and Kathy Miller are some of those that are with us here this afternoon to honor Judge Fahrnbruch. Also I see Court of Appeals Judge Arlen Beam as well.

So I thank you all for being here and I take this opportunity to note for those present that this entire proceeding has been memorialized by the court reporter. After these proceedings have been transcribed by the court reporter, copies will be distributed

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to family members and those of you who have spoken on behalf of Justice Fahrnbruch. 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 C. Thomas White, who chaired the Court's memorial committee and who with the assistance of Janet Hammer from the Court Administrator's Office, who is primarily responsible for organizing this ceremonial session.

This concludes this special ceremonial session of the Nebraska Supreme Court. The Court would encourage any of the participants, family members and friends of Justice Dale E. Fahrnbruch to remain in the courtroom for a moment to greet each other on this occasion.

We are adjourned.

(Ceremonial session adjourned at 2:33 p.m.)