

Nebraska Supreme Court

In Memoriam

JUSTICE H. HALE McCOWN

Nebraska Supreme Court Courtroom
State Capitol
Lincoln, Nebraska
April 27, 2006
2:00 p.m.

Proceedings before:

SUPREME COURT

Chief Justice John V. Hendry

Justice John F. Wright

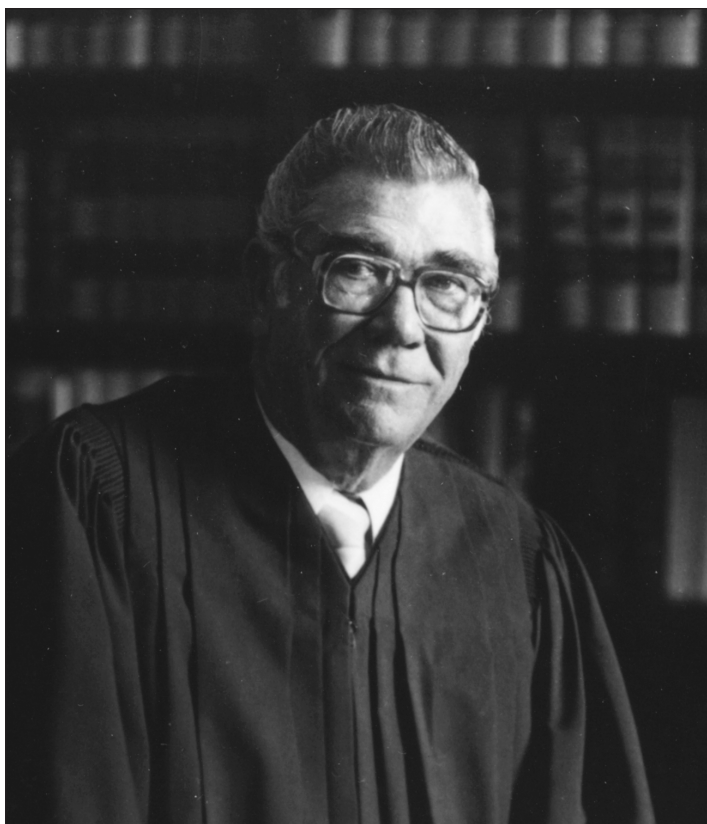
Justice William M. Connolly

Justice John M. Gerrard

Justice Kenneth C. Stephan

Justice Michael McCormack

Justice Lindsey Miller-Lerman



JUSTICE H. HALE McCOWN

Proceedings

CHIEF JUSTICE HENDRY: Good afternoon, everyone.

The Nebraska Supreme Court is meeting in special ceremonial session on this 27th day of April, 2006, to honor the life and memory of Former Supreme Court Justice Hale McCown 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. Next to Justice Miller-Lerman is Justice Kenneth Stephan. To Justice Stephan's right is Justice William Connolly. To my far right is Justice Michael McCormack. Next to Judge McCormack is Justice John Gerrard. And to my immediate right is Justice John Wright. And I am Chief Justice Hendry.

The Court further acknowledges the presence of Justice Hale McCown's daughter, Lynn; and son Bill; other members of the family; members of the judiciary; members of the bar; and friends of Former Supreme Court Justice McCown.

At this time the Court recognizes Former Nebraska Supreme Court Chief Justice C. Thomas White, 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, there will be three speakers. The first of these speakers that I'm pleased to introduce is a Former Chief Justice of this Court, the Honorable William Hastings who served with Justice McCown.

Justice Hastings.

CHIEF JUSTICE HENDRY: Good afternoon, Mr. Chief Justice.

CHIEF JUSTICE HASTINGS: Good afternoon, sir.

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May it please the Court, William Hastings appearing as a member of the committee to honor and memorialize former judge of this court, H. Hale McCown.

Hale McCown was born January 19th, 1914, and died September 1, 2005.

He served with distinction on this court from 1965 until his retirement in 1983, having been appointed as the first Supreme Court Judge so appointed under the merit plan of selection.

During his tenure he authored more than 750 opinions, of which over 200 were dissents. I remember particularly his comments on many occasions when it came his turn to speak during consultation following oral arguments he would say something like, "Well, I look at this a little differently." You almost could be sure he was going to write a dissenting opinion.

In an interview by the Omaha World-Herald, Former Governor Frank Morrison ruefully recalled his judicial appointee's integrity, when after having signed a controversial tax bill appealed to the Nebraska Supreme Court, he said, quote, My own appointee wrote an opinion that my actions were arbitrary and capricious, end of quotes.

Hale graduated from Hastings College in 1935 and from Duke Law School in 1937. It was while a student at Duke that he became a friend of Former President Richard Nixon. It was that friendship that probably cost him an appointment to the United States Court of Appeals. During the presidential campaign, Hale, although a registered Democrat, chaired a Democrats for Nixon Committee. Unfortunately for him, Johnson was elected president and he was not about to appoint a friend of Nixon's.

During World War II, McCown served in the Pacific as a lieutenant of the United States Navy. Following his discharge from service he returned to private practice of law in Beatrice, Nebraska. During that time he was active in the Nebraska Bar Association, serving as chair of the House of Delegates from 1955 to '56 and as president from 1960 to 1961. He was vitally interested in continuing legal education. He served as a fellow of the American College of Trial lawyers, as a member of the Legal Ethics Committee of the American Bar Association and was elected to the American Law Institute in 1957 and served on its governing council from 1969 to 2000.

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Hale McCown has been listed in Who's Who in America since 1961 and was recognized by Hastings College in 1981 with an Outstanding Alumni Award and was honored by Duke University in 1986 with the Charles S. Murphy Award for outstanding public service. In 1996 the Nebraska State Bar Foundation presented him with the Legal Pioneer Award for a lifetime of achievements of a lawyer who makes innovative contributions to the improvement of justice.

On a personal note, Hale was a consummate gentlemen, avid world traveler and a lover of fine food and Scotch whiskey. His and his wife Helen's annual football season opener luncheon co-hosted with Carl Olson and his wife was a party that many of us looked forward to each year. We all miss his pleasant, gentlemen ways as he lived up to his credo of "treat others with respect, not necessarily because they deserve it, but because you are a gentleman."

Thank you.

CHIEF JUSTICE HENDRY: Thank you, Chief Justice Hastings.

CHIEF JUSTICE WHITE: May it please the Court, the next speaker will be Mr. Thomas Davies, a lifetime colleague and friend of Judge McCown's, a distinguished member of the bar and a fine practicing lawyer.

Mr. Davies.

CHIEF JUSTICE HENDRY: Mr. Davies, good afternoon, sir.

MR. DAVIES: Good afternoon.

May it please the Court, my name is Thomas M. Davies, and I am a member of the Lincoln law firm of Mattson, Ricketts, Davies, Stewart & Calkins.

Hale McCown was my friend, and my assignment is to talk not about the honors that he accumulated, and Judge Hastings has covered all those. My assignment was to talk about Hale, the individual, and the personal things in his life, and I'll try to do that.

There was a family dinner last night and the whole family is here, as you might know, and many others, and friends, and the — you could — the nostalgia was so thick you could cut it with

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a knife, but it was a delightful evening and we heard a lot of things. I revised my notes after last night's meeting to bring them up to date.

Now, I cannot discuss Hale McCown without discussing his wife of 67 years, Helen, a beloved wife who was very supportive of Hale, and also of his three children, Bob, who is now deceased; and Bill and Lynn, both of whom are here today.

I first met Hale before World War II, and my vintage rates everything before World War II or after World War II. I knew him before World War II but not well. As you have heard, he and Helen graduated from the same Duke law class in 1937 with other outstanding persons, including Nixon and his wife Pat, and they were good friends of theirs.

Helen, by the way, was the fourth woman to graduate from Duke Law School.

When I graduated and was admitted to the bar in 1937, one of the outstanding law firms in the state was the Beatrice firm of Rinaker, Delehant and Hevelone. Rinaker was deceased, and the law firm looked — needed help and they reached out to Hale because he had grown up in Beatrice, had gone through Beatrice High School and was well known. And Morris Hevelone met Hale, who was coming from the West Coast, and he was coming from Nebraska, they met in Greenriver, Wyoming, and it was decided at that time that Hale would become a member of that firm, and the family did move back to Nebraska.

We were all in World War II and Hale served in the Navy on a CVE, which is an escort carrier. We called them Jeep carriers — I was in the Navy — he told one story, so you'll hear one war story. They were at the time in the Philippines and it was at the landing at Leyte Gulf, and a Japanese shell hit their ship, went through — on through and out the other side and did not explode, so that was something that was riding with him at that time.

He returned to Beatrice after World War II. At that time the Nebraska State Bar Association had a sort of a tax seminar that toured the state and it was sort of a circus in a way. The president of the bar always attended and, of course, talked to the people about the Bar Association and how important it was. And Hale and Flav Wright were often on that, and I also was on that panel for several years. And it was good.

By the way, George Turner was a clerk of this Court but he was also secretary of the Bar Association, something that you would not do now, but at that time — and he'd been with the circus that headquartered in Fairbury and so he knew how to set up a seminar and make reservations, and we traveled by bus and train and it was quite a deal. And I mention it because that's where I knew Hale. That's where I became acquainted with him.

Now, the one thing to mention on the McCown family is the polio that struck in 1953 and it hit the McCown family. Now, Lynn had it but she was telling me that she had no residue. Bill had a residue for a while; in other words, one side was — he had a problem with one side, but it went away. But Bob had severe paralysis and it never went away and was with him during all of his lifetime and this was a tragedy that was with Hale and Helen and Bill and Lynn all during the time that he was alive. He was an outstanding fella. I'll tell you about him.

We had him in our family for two weeks during one summer when the family went on vacation and it was a great time. We got to know him. I'm sure that he was down quite a bit but we never saw it. He was always upbeat. And imagine that young man lying flat on a hospital bed, or he finally — they were able to work it out that he could be in a wheelchair for part of the time. Had a brilliant mind. He graduated from Hastings College and then had a Ph.D. in physics from Stanford.

Lynn was telling me that they were — that Hale and Helen were looking around for a place where they could handle somebody that was handicapped. The University of Illinois said they could. Then they took Hale — I mean Bob — Hale took Bob to the University of Illinois and they took one look at Bob and said we can't do it. He's too badly paralyzed.

Then they somehow hooked up with Stanford and they went there and Stanford said, well, we're not set up. We really aren't set up for this, but we'll do it. And so they did. And I think during the times that he was in Hastings and also at Stanford, the way they handled it, they had one of the students hired to be with him all the time and take care of him and see that he got to class, and, of course, that student probably was getting through school with that job.

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My son, Tom, Jr., remembers that our family visited the McCowns in Beatrice and my son was in junior high. He remembers playing golf with Bob and that was just before Bob was struck with polio.

Now, Helen and Hale built an addition to their house for Bob. It was his separate room and they had also built a swimming pool and Helen was out every day that it was possible with Bob in that swimming pool for therapy.

Now, the other children, Bill and Lynn, were very supportive of Bob. Bill graduated from the Nebraska College of Law and went with Northwestern Mutual Life Company in Milwaukee and became a vice president in charge of investments before his recent retirement.

Lynn went to Smith College, the University of Nebraska and graduated from Antioch. She married, had three children and has been active in astrology.

Helen and Hale were great travelers and I think they went to something like 67 countries. I was privileged to go with them, they asked me to go, and I think we were the only three from Nebraska of judges and lawyers. It was sort of a, you went and met judges and lawyers from other countries. We went to Poland, Czechoslovakia and Romania.

While we were in Poland there was a side trip that wasn't a part of the main trip, to the Nazi death chamber in Auschwitz. I think we were chicken. We really didn't want to go but we thought that we must. And it was more terrible than we'd ever read about. And since then you've maybe read that people are denying that it happened and some are saying, oh, well, it wasn't as bad as they say it was. It was far worse and it did happen.

Ross McCown is a nephew of Hale, a son of John, who is deceased, and he and his wife, Lynn, are here today. He remarked on Hale and Helen's passion to golf and that they played golf together here in Lincoln very often and that also they played — would play golf on their trips at various places.

Hale was a Big Red fan and a — was interested in all sports. He went to the Drake Relays every year with a group that he assembled from Beatrice, and son Bill came down from Milwaukee with his special friend, Tom Mayo. Bill and Tom of course are both here today and I think I heard that tomorrow

morning they will be going to the Drake Relays, so it's a carry-on of the old tradition. And I was privileged to be a part of that group for several years.

Son Bill commented on Hale's taste for Scotch whiskey and he evidently had some very fine, aged premium Scotch, but he was a rather canny, frugal Scotsman. He very seldom touched that good stuff and he didn't certainly give it to guests very often and he certainly didn't give it to his family, including Bill.

His daughter, Lynn, had a final comment that her father understood gratitude and was truly grateful for his life, his career and his family.

My daughter Joanie had this summary on Hale. He was a gentleman's gentleman, and with that I concur.

Respectfully submitted.

CHIEF JUSTICE HENDRY: Thank you, Mr. Davies.

CHIEF JUSTICE WHITE: May it please the Court, these are the transcribed remarks of Chief — Former Chief Justice Norman Krivosha who is in Florida doing heavens knows what.

"May it please the Court, it is with great respect and deep humility that I join with others today to remember the life of one of our most esteemed colleagues, Hale McCown, who departed this life as he lived his life, quietly, on September 1, 2005, at the enviable age of 91.

"Born in Kansas, Illinois, on January 19, 1914, he received his A.B. from Hastings College, Hastings, Nebraska, in 1935 and his law degree from Duke University College of Law in 1937. While he had a number of classmates who were destined to fame, including President Richard Nixon, he had eyes for only one of his classmates, Helen Lanier, who hailed from the great Northwest, which already told you much about a woman law student in the late thirties. They were married in 1938 and at the time of his death had been happily married for 67 years. Together they had three children, Bob, Bill and Lynn. Bob preceded Hale in death.

"Little needs to be said about Mac's beloved Helen, than to recognize that each was the other's best friend and their life together was a model for any married couple. As they were inseparable in life, so too were they inseparable in death. Within just a few weeks following Hale's death, Helen joined him and

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those who knew this wonderful couple are sure they are once again together.

“When in 1965, Hale came to the Nebraska Supreme Court, the first appointee to the Court under the newly adopted merit plan for the selection of judges, he brought to the Court a vast and diverse knowledge of the law. He had practiced as a ‘country lawyer’ in Beatrice since leaving the Navy after World War II and at the time of his appointment he was a senior partner of McCown, Baumfalk & Dalke. While he took unusual pride in calling himself a ‘country lawyer,’ he was anything but. His knowledge of the law covered all fields. His peers recognized his outstanding trial ability by electing him to the American College of Trial Lawyers, reserved for only the best of the best.

“Additionally, however, he served as a general counsel to a number of corporations who later acquired national recognition. He was truly a full-service lawyer who brought that vast and diverse background to the Court where as a court of appeal as a matter of right, everything was placed upon the docket for the Court’s consideration without choice. During the 18 years he served on this Court he wrote more than 750 opinions. More than 100 dissents, a practice with which I can identify. His opinions were clear and concise” — that was Judge Krivosha’s observation, Your Honor. “His opinions were clear and concise” —

CHIEF JUSTICE HENDRY: Thank you for clarifying that.

CHIEF JUSTICE WHITE: Yes. Thank you, Your Honor. May I continue?

“His opinions were clear and concise and left none with wondering what he meant, a practice to be emulated by all who are called to render decisions on the law.

“Not only did he devote his legal talent for the benefit of those who brought their claims before the Court, but he likewise gave of his time and talent for the benefit of all in general. He served the Nebraska Bar Association as its chair of the House of Delegates during 1955, 1956 — 1955, ’56 and as its president during 1960, 1961. He was elected as a member of the prestigious American Law Institute in 1957 and elected to its executive council in 1969, where he served until 2000, when he was made an emeritus member of the executive council. A roster of the

executive council reads as a who's who in American law and Hale's name was appropriately included among them.

"For me personally, having the experience — the opportunity to serve with Mac on this Court for five years was a chance of a lifetime. While all of the members of this Court were extremely kind to the brass young new Chief Justice whom some of the Court properly called 'Sonny,' Hale was particularly kind and helpful, always being sure that I was pointed in the right direction and warned about where the 'landmines' were located. Although I did not always follow his advice, I had no one to blame but myself. He was always there if I needed him and sought his counsel.

"He was always open to new ideas and tolerant of others, even when he totally disagreed. His dissents were models of civility. He was the prototype of how one could disagree without being disagreeable and he never carried a disagreement beyond the dissent.

"An anonymous psalmist once wrote in part many years ago: 'Even a long life ends soon. But a good name endures forever.'

"While it is true that Hale McCown lived a long life, of greater importance is the fact that he left a good name which will endure forever. When generations in the future years seek to learn of the history of this Court, the name of Hale McCown shall be at the top.

"While we shall miss his smiling gentle face, we shall forever remember his good name. As I suggested at the outset, I am honored to have been selected to be permitted to say a few words in memory of my colleague and friend, Hale McCown. He shall remain in our hearts forever."

That concludes the remarks of Judge Krivosha.

Your Honor, on a brief personal note, I was — served with the Court for a number of years with Judge McCown.

A long time ago a poet or playwright Thomas Bolt wrote of another man who was a warrior, a soldier, a husband, a scholar, a father, a man for all seasons. So was our friend, Judge McCown, a man for all seasons. We will miss him.

This concludes our remarks, Your Honor.

CHIEF JUSTICE HENDRY: Thank you, Chief Justice White.

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I would like for the record to acknowledge the presence of a few other people that I see with us today. I see Retired Supreme Court Justice Nick Caporale is here. Current Chief Judge of the Court of Appeals Everett O. Inbody is with us. Retired Supreme Court Justice John Grant is with us this afternoon. Our State Court Administrator, Janice Walker; Retired District Court Judge William Rice; Retired District Court Judge Ronald Reagan; Supreme Court Administrative Assistants, both Jackie Hladik and Bette Johnson, are also with us this afternoon. And we appreciate your presence being here very much.

I take this final opportunity to note for all 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 to family members and those of you who have spoken on behalf of Justice McCown. We will also forward a copy of the transcription to West Publishing for inclusion in the Northwest Reporter.

On behalf of the Nebraska Supreme Court, I extend this appreciation to Former Chief Justice C. Thomas White, who chaired the Court's Memorial Committee, and who with the assistance of Janet Bancroft from the Court Administrator's Office was 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 McCown to remain in the courtroom for a moment to greet each other on this occasion.

CHIEF JUSTICE HASTINGS: Your Honor, may I suggest that there is one more former judge —

CHIEF JUSTICE HENDRY: Yes, please.

CHIEF JUSTICE WHITE: — Judge Bill Rice from Pawnee City, District Judge.

UNIDENTIFIED SPEAKER: Bill Colwell.

CHIEF JUSTICE HASTINGS: What'd I say, Rice?

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CHIEF JUSTICE HENDRY: All right. Thank you very much.
The record will so note.

All right. With that we are adjourned. Thank you all.

(Proceedings adjourned at 2:31 p.m.)