

Nebraska Supreme Court

In Memoriam

HONORABLE HARRY SPENCER

Nebraska Supreme Court Courtroom
State Capitol
Lincoln, Nebraska
October 16, 2007
3:00 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

Proceedings

CHIEF JUSTICE HEAVICAN: Good afternoon to everyone. The Nebraska Supreme Court is meeting in special session on this 16th day of October, 2007, to honor the life and memory of former Supreme Court Justice Harry Spencer 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 the far left is Justice 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 Spencer's family and I will introduce some of you now, and you may stand. First of all, granddaughter, Stephanie Harlan Skrupa. And why don't you all just remain standing for a minute. Frank Skrupa, also, her husband; Leone Spencer Harlan, also a daughter; Terry Spencer, son; and Pat Spencer, the wife of Terry Spencer; Bob Patterson and Mavis Patterson, that would be son's brother-in-law and sister-in-law, according to my information; Scott Spencer, grandson; and Danielle Spencer, wife of Scott. And that's all the family members I have listed. If there are other family members —

MS. SUNDQUIST: Your Honor, I'm Amanda Sundquist, Judge Spencer's great-granddaughter.

CHIEF JUSTICE HEAVICAN: Great. Thank you very much. Anybody else from the family?

You may all be seated, and thank you so much for honoring us with your presence here today.

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

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 C. Thomas White. He is the Chairman of the Supreme Court's Memorial Committee, and he will conduct the proceedings for us today.

Good afternoon, Mr. Chief Justice White.

CHIEF JUSTICE WHITE: May it please the Court, it's my honor to be chair again of a committee to — and I'm not sure about the — how long I — what time I might not be here myself in a different capacity. I had the honor of serving with Harry Spencer from 1977, when I was appointed, to 1979 when he retired. Although there are others who have served with him or know him well, and the first of these speakers, I should like to introduce, Mr. Charles Thone, our former Governor of the State of Nebraska.

Governor Thone.

CHIEF JUSTICE HEAVICAN: Governor Thone, good afternoon.

GOVERNOR THONE: Chief Justice Heavican, members of the Court, may it please the Court, you know, it was George Bernard Shaw who once wisely opined that no remarks from an ex-governor at a judicial setting such as this are all that bad, if they're short enough. So as I like to say in lieu of any brilliance or profundity, I'll confine myself to some brevity here today. But the good Judge asked his granddaughter to see that I came today and offered some remarks, so I like to think that that was probably the last unwise order of the Harry Spencer Court.

As has been documented here and there, Judge Harry Spencer graduated magna cum laude from the Nebraska Law School. And then he later lectured there, a course in Wills and Probate. He was, as I recall, Lancaster County Judge at the time.

I thought I'd kind of take a little different approach. We've got Professor Gradwohl here. He can talk about the academic side. And we've got former Chief Justice Bill Hastings here. He was associated closely with the Judge on the bench. My initial association with Professor Harry Spencer was a little unusual. As I indicated, he taught this course in Wills and Probate, and

my first introduction to him came in 1946. For you math majors, that's about 61 years ago.

I, at the time, was a somewhat bright and bushy-tailed freshman at the Law School. And to be honest, in contrast to the good Judge, I was a magna cum laude goof-off of some respects as far as diligent law school standards were concerned. I was kind of totally involved in campus politics, Inter-fraternity Council, and extra-curricular activities over there, and even some field trips we took occasionally to Omaha or Kansas City, and even New Orleans.

My personal big problem at the time with this Spencer Wills and Probate course was that it was taught on Saturday morning at 10:00. Maybe some of you remember. Well, my weekend at that time, usually started about Thursday at about 5:00 or 6:00, and this was, again, you've got to remember, after the Big War. For the uninitiated to know, that was World War II. And we returned veterans were, we thought, quite worldly wise. We just weren't about to let law school interfere with our extended social life and our overall college education. Well, typical of my academic discipline at the time, I went to the first couple classes and then I skipped two, or three, or four in a row. And as [Professor] Gradwohl will really remember, Judge Spencer was meticulous in roll calls, and he noticed my absence after about the fourth week or so. And he glared down at the class one Saturday morning and he said, "Now, if any of you here know or are a friend of this Charles Thone, that's T-h-o-n-e," and he rang it a couple, three times, "let him know that if he doesn't start showing up here and misses one more class before the semester's over, I'm going to flunk him with the worst grade I can give him." Well, two classmates came over to the Phi Gam house to consult with me a little and deliver the Spencer ultimatum, Roy Sheaff, maybe some of you knew Roy, of course, and Dean Kratz.

Well, the next Saturday, I was there bright and early, and I'd gotten the message loud and clear, and I never missed another of his classes. But as Paul Harvey might say, "Here's the rest of the story."

The first time I showed up, the Judge looked down at me and glared and said, "Well, it's sure nice that Mr. Thone would spend some of his valuable weekend with us. Would he please

stand up and recite for the class here the first assigned case today.” Well, of course, I wasn’t totally prepared, which he let me know rock right, and although at the end, he kind of was upbeat about it.

Well, this went on for the rest of the semester. The first case recitation all the time was “Mr. Thone will now stand up and recite this case for us.” Well, you know, I got kind of smart. I thought, “Well, you know, I’ll just read that first case and, boy, I’m all set here.” Well, about the third time, he said, “Well, we’re going to change the order of the cases a little today and Mr. Thone will review for us the last assigned case.” Well, evidently he’d done me a little bit of a favor, because I ended up getting an awful good grade in the exam.

But years later, I talked with him about this. And he looked me right in the eye and he said, “Well, some of you G.I. Bill guys weren’t at all appreciative and totally understanding of this U.S. Government-paid and this very short three years, this great opportunity that you all have here in law school. And he says, “I hope I motivated a few of you to straighten up and fly right. Charley,” he said, and I remembered this forever, “by the time you really learn how to make the most of life, the most of life is gone.” And of course, he was absolutely right.

Years later when I was governor, actually 30 years later as I recall, Judge Spencer was quite often, along with our excellent Attorney General at the time, Paul Douglas, my unofficial advisors on judicial appointments across the board. Now, Paul — and you all know Paul pretty well, he was kind of open and above-board about it. The Judge was much more discreet. But I can assure you, he got his oar in on every one of them with me personally. And frankly, I was helped considerably by it. Judge Spencer knew the judiciary as well as any judge or lawyer in the state, and, of course, Paul Douglas knew the bar awfully well, too.

Later on, when I was out of office, we had a money management group that met in my basement every Wednesday night for years. The Judge never missed a session when he was in town. Now, some of you might equate that money management group with just an old style poker game. That’s what it was. In those years, if there was ever a dispute on anything, all eyes turned

to the good Judge. He was our most popular member, and his words settled the issue. There was never, ever a successful appeal of record, I assure you.

Judge Harry Spencer looked like a judge, that curly white hair, kind of rotund. He deeply felt that he honored and that he was honored by the law. He was a superlative student. You all knew that. And he honored the law with high distinction.

He especially enjoyed civic and fraternal work, and he was especially good at it. In my opinion and in the opinion of many others, Nebraska today is a better place because this native of Waltham, England, lived and worked his long adult life here in Nebraska. His three daughters, his three sons, his 13 grandchildren, his 23 great grandchildren, and his one great-great grandchild should be very proud, indeed, of their grand-grand-daddy, the Good Judge Harry Spencer. As they say, he was special. He was a keeper.

Thank you members of the Court, very much.

CHIEF JUSTICE HEAVICAN: Thank you, Governor Thone.

(The following remarks were submitted by former Chief Justice Norman Krivosha who was unable to attend the ceremonial session of the Supreme Court.)

CHIEF JUSTICE KRIVOSHA: May it please the Court, Mr. Chief Justice and Honorable Members of this Court, to be asked to participate in a memorial service for a departed colleague and friend is most often a bittersweet experience. To have been asked to participate when so many more are available and far more qualified is indeed a great honor; yet to have to participate is of deep sadness. It is with such bittersweet feelings that I now participate in a memorial service for our departed former brother on the Court, Judge Harry A. Spencer.

For many, myself included, it seemed as if such an occasion could not ever occur. It seemed for sure that this man of many talents would go on forever, as indeed we hoped he would. Born in 1903 in Bishops Waltham, England, he lived to the incredible age of nearly 104. But it was not just that he had longevity. With that he remained strong of mind and body.

I vividly recall attending his 100th birthday where, dressed in his best, he greeted each of us fully cognizant of who we were and where in his life we had been, even though he may not have

seen us for a long time. One by one, as we passed his chair, he acknowledged us, sharing with some of us his current activities, including the fact that he had not lost either his love for, or his knowledge of, poker.

The lives of Judge Spencer and Norman Krivosha crossed many times over the years. While he was still a county judge, I was one of his students in the Wills and Estates course he taught at the University of Nebraska Law School. We learned not only the black letter law, but the way to do it. His may have been the first clinic taught in Law School, simply by reason of his combining the law of the textbook and statutes with the practical knowledge of his courtroom.

As he advanced to the District Court bench and I advanced to the real practice of law, we spent many times together. I specially recall his having appointed me to represent a young man charged in district court with theft. At the sentencing, I had succeeded in locating several uncles who lived in Arkansas, who drove all night to be in court for the sentencing. Recognizing that perhaps all this young man needed was someone who cared about him, he put the young man on probation to the uncles in Arkansas. He had the combination of a no-nonsense but compassionate jurist.

It was therefore with some pleasure that upon being appointed Chief Justice of this honorable Court, I should find Judge Spencer presiding as Chief Justice pro tem. He was extremely helpful and thoughtful to me, and I was most grateful to him for it. Wherever I might travel during the years on the Court and advise that I was from Nebraska, some judge who had attended the National Appellate Judges Conference would inquire about Judge Spencer. He was known throughout the country and today the educational program of the National Appellate Judges Education Program is named in his honor.

He lived a long life. But much more than that, he lived a full life and we are a better place because he passed this way.

CHIEF JUSTICE WHITE: May it please the Court, the next speaker is an academic, Professor John Gradwohl of the University of Nebraska, was well acquainted with Harry, his scholarship and his study habits.

[Professor] Gradwohl.

CHIEF JUSTICE HEAVICAN: Good afternoon, Professor Gradwohl.

PROFESSOR GRADWOHL: May it please the Court, I am John Gradwohl, very proudly the Judge Harry A. Spencer Professor of Law at the University of Nebraska Law College. The Professorship and a study room in the library of the Law College were established by his daughter and son-in-law, Lee and the late Neal Harlan, in recognition of Judge Spencer's special interests and achievements in the areas of legal and judicial education.

Judge Spencer graduated from the University of Nebraska Law College in 1930 with the highest academic honors given at that time. He had worked in banking before deciding on a career in law. When my classmates and I arrived at the Law College, in 1949, Judge Spencer had been a lawyer for a decade-and-a-half and a county judge for four years. He taught the Wills course at the Law College from 1942 until 1961, his first year as a Justice of this Court, with a couple of years out when the college was closed during World War II. Each of today's speakers was a student at the Law College when Judge Spencer taught the Wills course.

Now, this was just a two-credit course, but it involved a lot of work. The statutes were a jumble, having been cobbled together from the territorial days. Probate practice, as you know, varied greatly throughout Nebraska's 93 counties. The authority of executors and administrators stemmed largely from orders of the Court, so Judge Spencer had acquired an intimate familiarity with all aspects of probate practice, testamentary trusts, and guardianships from intense daily involvement as a supervising judge. There were no "Cliff's Notes," other study aids, computers, or even suitable textbooks available for the Wills course at that time.

Judge Spencer approached the teaching of Wills with the same vigor and in the same rapid speed that he climbed the treacherous steps of Memorial Stadium. Each stair would be dealt with, a direct route would be followed, and no time was to be wasted. Daily assignments could run more than 15 or 20 items, and the total course assignments probably ran more than 2,000 pages, that is, if a student could find all of the cases and other library

books involved in the assignments and if the relevant pages were not too tattered to be read easily.

I'm not sure I believe all of former Governor Thone's statements about his preparation for the Wills course, because I don't think he could ever find all of the materials that Judge Spencer had assigned and we had to go find in the hard covers with all the dust and all in a library that just had limited numbers of copies of these books. The legend was that Judge Spencer had examined cover to cover all of the 150 or so volumes of the Nebraska Reports that there was at that time to find everything related to the law of wills and estates.

Judge Spencer had become a District Judge by the time my class took his Wills course. Vern Hansen, who went on to practice law in Gering; David Downing, who practices in Superior and was a Nebraska State Bar president; and I were enlisted to help Judge Spencer prepare course materials for the Wills course. In addition to all of his other activities, he put together a really excellent collection of commentary, cases, problems, questions, and forms in 415 single-spaced mimeographed pages. The Wills course was still demanding. Judge Spencer was in the forefront of legal education of the time in his preparation of these course materials. There just weren't materials of this sort that were available any place in the country. And additionally, he was far ahead of the times in his understanding and application of probate law.

Judge Spencer's Wills course materials not only helped to standardize probate practice throughout the state, but served as a valuable research vehicle in the 1970s when Nebraska looked at and then adopted the Uniform Probate Code, which was proposed by the National Conference of Commissioners on Uniform State Laws. That Code established the more modern system throughout the country, which actually resembled much of what Judge Spencer had previously taught and done as proper practice and proper policy.

Judge Spencer stopped teaching the Wills course shortly after he became a Supreme Court Justice, but he soon became enmeshed in American Bar Association activities which led to the development of major national judicial education programs. He'd previously been President of the Lincoln Bar Association

and Vice-president and Executive Committee member of the Nebraska State Bar Association.

In the early 1960s he held several key positions, including member of the Executive Committee in what was then the Judicial Administration Section of the American Bar Association. As the Judicial Administration Section evolved into a Judicial Division, Judge Spencer was one of the founders of the Appellate Judges Conference that was established in 1964. And remember, that's just three years after he joined this Court, so he didn't waste a moment in his continuing interest throughout his career at the legal education, and then to judicial education.

Judge Spencer became a pioneer of the educational programs within the Appellate Judges Conference. His name became synonymous with judicial education. Nebraskans active in the American Bar Association were routinely asked, "Do you know Judge Spencer?"

Today the Appellate Judges Conference has a number of continuing education programs. The first of these programs that the Appellate Judges Conference established continues to honor Judge Spencer, the Spencer-Grimes Seminar for Federal and State Appellate Judges. It was established in 1968 when Judge Spencer was Chairman of the Appellate Judges Conference. Justice William Grimes was a long-time New Hampshire Supreme Court Judge who was active in arranging of the inaugural full-scale national program designed expressly for appellate judges. The Chief Justices, Your Honor, would not let the appellate justices go to meetings at the Conference of Chief Justices, so this is one reason prompting Judge Spencer to help form the Conference of Appellate Judges, which exists today.

The Spencer-Grimes program is now well-established and endowed at the SMU Dedman School of Law in Dallas and holds programs at a variety of locations. Last month, the Spencer-Grimes program participated in a four-day major Appellate Judges Education Institute in Washington, D.C. The program included participation by the Supreme Court of the United States and dealt with many of the country's most important current judicial issues.

Judge Spencer remained a personal friend of the almost 20 years of Nebraska law students for whom he'd been a professor,

but he never completely shed that role of professor with his former students. I take it from Governor Thone's remarks today that that included governors as well as the rest of the world. His discussions of the law with former students were likely to be a professional line of questioning, "Have you considered this issue?" Or, "Have you considered this statute or this case?" Now, perhaps Judge Spencer would rule on money issues in Governor Thone's basement, but when some of us talked with him about the Uniform Probate Code, he reverted to his professorial role and he would not express an opinion. He would only say, "Have you thought about . . ." and invariably we had not thought as fully about that issue as we should have.

As a trial judge, Judge Spencer had a reputation for running a tight courtroom, being in charge, and ensuring that proper procedures were meticulously followed. When he became a Supreme Court Settlement Conference judge after retiring as an active Justice in 1979, he was tremendously successful in getting the parties to settle cases even after a district court decision. He thoroughly understood the legal issues and the worth of the litigation, and his reputation was that he had no hesitation in expressing his views clearly and forcefully to the lawyers involved. His professional demeanor, when called upon, was that of gentle encouragement for the learner to do it in his or her own way with just enough assistance from him to enable the learner to accomplish the task. As a Settlement Conference Justice, I think that he enjoyed a different reputation.

Judge Spencer was able to enjoy one accomplishment not achieved by any other University of Nebraska professor or Supreme Court Justice. He celebrated his 100th birthday by inspiring a Cornhusker football victory in a cameo appearance from the special balcony at Memorial Stadium. Thank you.

CHIEF JUSTICE HEAVICAN: Thank you, Professor Gradwohl.

CHIEF JUSTICE WHITE: May it please the Court, our last speaker is Chief Justice William Hastings, who succeeded Judge Spencer to the District Court and then took over his seat when Justice Spencer retired. May I introduce Chief Justice William C. Hastings?

CHIEF JUSTICE HEAVICAN: Thank you. Good afternoon Chief Justice Hastings.

CHIEF JUSTICE HASTINGS: Mr. Chief Justice, members of the Court, may it please the Court, the problem with going last is most everything you've written down to say has been said, but I can't edit that quickly, so I'll just read what I've wanted to say.

Harry Spencer was an uncommon man. The fact that he lived for almost 104 years is uncommon in and of itself. He was elected to the Supreme Court of Nebraska in 1961 and served with distinction until his retirement in 1979. I was privileged to succeed him on this Court.

He was born in England, but lived most of his life in the United States. He attended South High School in Omaha, the University of Nebraska, and University of Nebraska College of Law. After practicing law in Lincoln for a number of years, he was elected to the County Court and served there until his election to the District Court in 1952, where he served until 1961. He was deeply devoted to the law, and as has been previously stated, he was active in the affairs of the State Bar Association as well as American Bar Association. He was one of the founders of the Appellate Judges Conference Educational Program and that program is now named in his honor. He was a regular lecturer at those meetings for a number of years.

Judge Spencer — and this sounds like Governor Thone's experience, but it's mine, too. Judge Spencer taught Wills and Probate at the Nebraska College of Law. I took his course and remember very well that he called on me to recite a case on a Monday following a weekend at home when I had gone pheasant hunting. I had not read the case and had to report that to him. Even though we were fraternity brothers, he called on me for the next six classes and fortunately, I had read all of the cases.

Harry was not one dimensional. He participated in the activities of the Lincoln Council of Churches, the Boy Scouts, Kiwanis, YWCA, and was the first judicial representative on the Board for the Nebraska State Retirement System.

His greatest love outside of the law had to be the Masonic Lodge including all of its bodies. He was Master of his local lodge, Grand Master of Masons in Nebraska, Potentate of the

Shrine and a 33rd Degree Scottish Rite Mason. He devoted half or more of his life to the Nebraska Masonic Home in Plattsmouth. He was appointed to the board in 1941 and served until 2004. By reason of his dedicated service, there is a new 24-hour nursing care wing, which was added in 1989 and was appropriately named the Spencer Wing. Harry lived out the remainder of his life at that home.

Mary C. Stapp, Executive Director of the Masonic Home wrote the following: "The employees at the Masonic Home, in every department, had the utmost respect for Judge Harry Spencer. Harry always showed an interest in the employees as individuals and truly cared and respected each of them for the work they carried out on a day-to-day basis. Harry was always a perfect gentleman, as he was his entire life, and freely expressed his appreciation to everyone who attended to his needs. Harry's genuine sincerity, kind nature, and humbleness left the employees in awe." End of quote. Thank you very much.

CHIEF JUSTICE HEAVICAN: Thank you, Chief Justice Hastings.

CHIEF JUSTICE WHITE: The program says that I shall give a few personal remarks. I served with Judge Spencer. As you know, at the time that I joined him, the Constitution of the State of Nebraska and the Constitution of the United States was in great and exciting flux. The rights of prisoners before the Court were being expanded or sometimes retreated, sometimes restrained. And during these conferences with formidable members of the Court like Judge Paul White, Judge Hale McCown, Les Boslaugh, Don Brodkey, the discussions were formidable, polite, courteous, and instructive. Judge Spencer was formidable, a good solid student of the law. His reasoning was persuasive. Sometimes, I did not always agree, but I always found it formidable. I am pleased to add my voice of a good man, a fine judge, who honored the State of Nebraska by his service. Thank you, Your Honor.

CHIEF JUSTICE HEAVICAN: Thank you, Chief Justice White.

I want to note that among the dignitaries with us here today is Lieutenant Governor Rick Sheehy. And I take this final opportunity to note for those present that this entire proceeding

has been memorialized by the Court. After these proceedings have been transcribed, the text will be uploaded to the Supreme Court's website and copies will be distributed to the family members and those of you who have spoken on behalf of Justice Spencer. 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 also again thank you for all of the presenters here today.

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 Spencer to remain in the courtroom for a moment to greet each other on this occasion. The Court will also come down and mingle with you. I thank you all for attending. We are adjourned.

(Ceremonial session adjourned at 3:40 p.m.)