

Nebraska Supreme Court

In Memoriam

CHIEF JUSTICE PAUL W. WHITE

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State Capitol
Lincoln, Nebraska
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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



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Proceedings

CHIEF JUSTICE HENDRY: Good afternoon. The Nebraska Supreme Court is meeting in special ceremonial session on this 21st day of October, 2003, to honor the life and memory of former Supreme Court Chief Justice Paul W. White and to note his many contributions to the legal profession.

I would like to take this opportunity to introduce to you my colleagues on the Supreme Court. Beginning on my far left is Justice Ken 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. To my immediate right is Justice John Wright.

I would also like to acknowledge the presence of Court of Appeals Judges Edward Hannon and Everett Inbody who are also here to honor Chief Justice Paul White. The Court further acknowledges the presence of members of Chief Justice Paul White's family, other members of the judiciary, members of the bar and friends of former Chief Justice White.

At this time the Court recognizes former Nebraska Supreme Court Chief Justice Norman Krivosha, chairman of the Supreme Court memorial committee who will conduct these proceedings. Mr. Chief Justice, good afternoon.

JUDGE KRIVOSHA: Good afternoon, Your Honor. May it please the Court:

We have assembled here today in this courtroom to pay tribute to the memory of Chief Justice Paul W. White who departed this life on the 23rd day of August, 2002. Born in Mitchell, South Dakota on February 12, 1911, Chief Justice White lived a full and rich life. Graduating from the University of Nebraska with honors in 1930, and its law school in 1932, Chief Justice White practiced law in Lincoln, Nebraska from 1932 until 1953, except for 50 months service in the United States infantry. Twenty of those months were spent in the Pacific Theater where Chief Justice White served as a prosecutor at the Japanese war crimes trials.

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Serving first as an Assistant County Attorney for the County of Lancaster, Nebraska, and then as an acting Municipal Judge for the City of Lincoln, Nebraska, Chief Justice White spent the next 10 years, from 1953 to 1963, as one of the District Judges for the Third Judicial District of Nebraska serving Lancaster County. He soon gained a reputation as a no nonsense, well-versed scholar of the law who expected the lawyers who appeared before him to be well prepared and ready to address the true issues involved in the case.

He was elected Chief Justice of Nebraska on November 6, 1962 and served until his retirement in August of 1978, having served as the last Chief Justice of Nebraska to be popularly elected to that office.

His reputation on this Court, as was his reputation on the District Court, was one of asking piercing questions and demanding correct answers. Often, because he was already far beyond the attorney presenting the argument, he appeared to some not to be paying attention when in fact he was already contemplating the next issue needed to be resolved in order to find the correct answer to the question presented by the appeal.

In addition to being an outstanding lawyer and judge, he was also father and husband. His wife, Carol, preceded him in death and they had one son, Mark White. There is much that can be said about the life of Paul White, but I shall leave that to those who shall in a moment follow me. I would like to share but one specific remembrance of Chief Justice White. On January 11, 1982, some four years after he retired from this Court, he returned to help pay tribute to Judge Edward F. Carter with whom he served. In his remarks concerning Judge Carter, Chief Justice White said, and I quote: "From time immemorial we have met to honor great judges when they have finished the terms of their commission and have passed from our midst. We meet to eulogize their personal and judicial qualities and to remember them with fond recollection. But, in a larger sense, each judge, and especially the great ones, carries the torch of our judicial sacraments: government under law, courage, independence, industry, devotion, patience, impartiality, and intellect, among others."

While Chief Justice White was at that moment speaking of Judge Carter, he could just as well have been speaking of himself,

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for indeed he was a great judge and possessed those qualities, among a number of others.

I was honored to have been selected to succeed Chief Justice White as I am honored to be permitted today to say a few words in memory of him. He will not soon be forgotten.

And now, if it pleases the Court, at this time I would like to ask a few friends and colleagues of former Chief Justice White to address the Court.

CHIEF JUSTICE HENDRY: All right. Thank you.

JUDGE KRIVOSHA: I should first like to call upon former Chief Justice William Hastings who served with Chief Justice Paul White on the District Court bench. Judge Hastings.

CHIEF JUSTICE HENDRY: Thank you. Mr. Chief Justice, good afternoon.

JUDGE HASTINGS: Mr. Chief Justice, may it please the Court:

Paul W. White had a distinguished judicial career spanning the years 1949 to 1978. He served four years as acting Lincoln Municipal Court Judge and was elected to the district bench for Lancaster County in 1953. He served in that capacity until 1963 when he was elected Chief Justice of the Nebraska Supreme Court where he sat until his rather unexpected resignation or retirement in 1978.

Actually, according to a report contained in a news article written by Gerry Switzer for the Lincoln Journal-Star on October 7, 1978, his judicial experience began during the 50 months he served in the infantry during World War II when he acted as liaison officer in Panama between American and Puerto Rican troops. He served as trial judge advocate for Panama 11 months and later was assigned to war crimes. At the end of the war he was selected by the Army to serve as chief prosecutor of Japanese General Masharu Homma who conquered the Philippines and was responsible for the death march atrocities.

Paul has been called an eccentric genius, and that probably well describes him. The label eccentric may stem in part from the fact that on many occasions you might ask him a question and

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seemingly he would pay no attention to you. Part of that was that he may have been in deep preoccupied thought, others times it was due to the fact that he really was hard of hearing.

As a testament to his genius, he graduated from high school at the age of 14 and finished law school at age 21, graduating with honors. He practiced law in Lincoln until 1953 when he was first elected to the bench. In spite of his 15 years as Chief Justice of the Nebraska Supreme Court, Paul White's first love was the trial bench and he was proud of his position as a District Judge. In that position he was in a great measure responsible for centralizing and strengthening the statewide probation system.

As Chief Justice he was instrumental in forming a committee which drafted the Nebraska standard jury instructions, a monumental accomplishment contributed to by many judges and lawyers who served under his supervision. That work was published as the Nebraska Jury Instructions and was and is a great aid to judges and lawyers in the trial of lawsuits.

He was a booster of the 1972 court reorganization plan which eliminated the justice of the peace system and required all county judges to be law trained. As a result of that plan Paul White organized the Court Administrator's Office and appointed its first director.

Paul White enjoyed life. He loved golf. He loved his friends. And he loved the law. His name will always be associated with the pursuit of justice. Thank you.

CHIEF JUSTICE HENDRY: Thank you, Judge Hastings.

JUDGE KRIVOSHA: I should now like to call upon Judge Leslie Boslaugh who served with Chief Justice Paul White on this Court.

CHIEF JUSTICE HENDRY: Thank you.

JUDGE BOSLAUGH: I am honored to speak with you today about Chief Justice Paul W. White. I served on the Supreme Court with Judge White during his entire tenure with the Court, which stretched from January, 1963 to September, 1978. This 15-year period saw 4,148 cases decided by the Supreme Court. Judge White wrote 545 opinions and 97 dissents during that time period.

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Many of us remember Justice White's colorful personality. He was known to be a serious competitor when playing bridge and handball. He genuinely enjoyed being in the presence of other lawyers and judges in both professional and social settings. He loved to tell stories. And he loved his cigars.

In addition, we also remember his strong qualifications as a talented lawyer, his sense of responsibility to the State and his guiding philosophy that the Supreme Court should represent leadership and be accountable to the citizens of the State.

Chief Justice White directly followed Chief Justice Robert Simmons, who, through his long and dignified career, exemplary personal integrity and judicial demeanor, seemed to some to personify the law itself. Judge White earned the task of filling these large footsteps by winning the last judicial election held in Nebraska in November 1962.

During Judge White's term Nebraska adopted the unified court system, which considerably increased the administrative responsibilities of the Chief Justice. The Nebraska Supreme Court also saw a rapid increase in the number of cases docketed, such that the rate of filings approximately doubled during Judge White's tenure on the Court. Having served previously as a Deputy County Attorney and District Judge, Justice White was no stranger to public service, and it was up to him to respond to these arduous and sometimes frustrating challenges in the best tradition of a public servant.

Chief Justice White wrote succinct, yet meaningful opinions. In *Iske v. Metropolitan Utilities District* he laid down a new rule concerning evidence in eminent domain cases. He held that land having value in terms of a reasonable prospective use for recreational and subdivision purposes must not have that value separated from the land's market value. This decision broke new ground and led to significant growth of lakeside recreational home sites redeveloped from sand and gravel pits in Nebraska.

Chief Justice White reaffirmed the constitutionality of the Nebraska Juvenile Court statute by holding that a juvenile hearing is a civil proceeding and that under the doctrine of *parens patriae* the constitutional guarantees of a jury trial and the incidents thereto are not applicable to juvenile proceedings. His opinion in

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McMullen v. Geiger came despite strong dissents from four members of the Court.

It was Chief Justice White who initiated the “state of the judiciary” addresses to the Nebraska Bar Association in the 1970’s, perhaps emblematic of his philosophy of the court system being accountable to the citizens.

In closing, with respect and warm affection, I offer these words that Judge White himself might say on an occasion such as this: “There are a multitude of others, besides the distinguished gathering here, who are of the same attitude and disposition.”

I thank you for the opportunity to speak at this proceeding. Thank you.

CHIEF JUSTICE HENDRY: Judge Boslaugh, thank you very much. I’m wondering if you could be so kind as to perhaps leave a copy of your words for the court reporter?

JUDGE BOSLAUGH: Yes, I will.

CHIEF JUSTICE HENDRY: Thank you very much.

JUDGE BOSLAUGH: Yes. Thank you.

JUDGE KRIVOSHA: Now, Your Honors, I should like to call upon former Attorney General Paul Douglas, who was County Attorney of Lancaster County during much of the time that Chief Justice Paul White was on the District Court bench and was Attorney General of Nebraska during part of the time that Chief Justice Paul White was here.

CHIEF JUSTICE HENDRY: Good afternoon, Mr. Douglas.

MR. DOUGLAS: Good afternoon, Your Honor. May it please the Court:

I would like to take my allotted time to give you what I consider some insight and I think very interesting and unusual experiences that I had with this man. You’ve heard from others and you will continue to hear when he was born, when he died and the high offices that he held.

I first met him in 1949, when I was a freshman in law school and he was a practicing attorney and an acting Municipal Court

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Judge, at a luncheon. He gave a speech to encourage us to join a particular law fraternity. He had introduced himself as P. Wellington White. And after I joined the fraternity and met him often at other fraternal functions, he would always refer to me as Brother Paul.

I was impressed that he remembered my name and after a couple of years I bothered to tell him that I was impressed that he would remember a freshman in law school and call him by name. He then explained to me his secret in how he remembered my name. He told me that he always remembered everyone whose first name was Paul, that his middle name was not Wellington, but it was just the name that someone had hung on him and he had fun using it when he wanted to have a good time.

Our paths crossed often. First when we both worked in the courthouse and then when we both worked at the state capitol. At the courthouse we formed a bowling league and both the judge and I joined the league. He had never bowled before, and had an awful approach, an awful style, and he must have thought that the object of the game was to have a low score.

Every day, once he found out that the object was to have a high score, he would drag someone, anyone, down to the bowling alley, which was only two or three blocks away, and have a round of bowling so he could become better. He wanted to become better and he certainly did become better.

Soon we would be laughing at his style and then be pleasantly surprised at his results. He did become a good bowler only because that's what he wanted to do. I understand that his golf was similar. He enjoyed it. It was the same there, bad in orthodox style, but equally good results.

When he ran for Chief Justice of the Nebraska Supreme Court he ran against the former popular Attorney General who had been on the ballot for approximately 14 years and successfully running every two years. And that former Attorney General was then a District Court Judge in the western part of the state. Also on the ballot was a Lancaster County District Court Judge who was well known throughout the state through his Masonic connections and through his various religious organizations. He ran a different campaign, one which everyone knew would not be successful, except he knew it would be successful.

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On election night at about midnight he was in third place and at that time I decided I would go visit with him to try to encourage him and hope that his spirits were not too low. His wife greeted me at the door, knew who I was, and told me that he was not seeing anyone, he did not want to talk to anyone, he didn't want any phone calls, but I insisted. And for once I was able to get my way.

She led me into the darkened room, made me promise that I would only stay a short period of time and he and I began talking. I made a flippant comment like, well, I'm glad you're going to stick around and be on the bench because I enjoy you there. He pooh-poohed that argument by telling me he didn't run for Chief Justice of the Nebraska Supreme Court to remain as a District Court Judge.

It was obvious that he had been crying, and he told me that he wanted to become a member of the Nebraska Supreme Court more than anything else in his life. He spoke of changes he wanted and what he wanted to get done. He was disappointed, not only for himself, but he was disappointed that he wasn't going to have an opportunity to change the judicial system and to do something about the salaries for the judges.

The following days when absentee ballots started coming in and when the western part of the state votes were being counted he rose to the second position. There he knew that he was going to win. He knew he was going to win because he told me he was going to work harder and do everything he could to become successful. His unorthodox way of campaigning and his energy made him the success in this endeavor again.

One time when we were both working at the courthouse and had gone to lunch we got into an argument that he took very seriously. He became oblivious to everything around him and to prove his point he slammed his car door, but forgot to remove his thumb. There he stood with his thumb in the door, bleeding, still arguing.

His bailiff came along, saw what was going on, went over and opened the door and the end of his thumb fell off. That didn't stop him, he kept on arguing, holding his thumb up, not wanting to go to the hospital. And we encouraged him to go to the hospital. He finally agreed and the bailiff was to take him to the hospital, but

the bailiff got sick at the sight. So he put the bailiff in the back-seat, got him comfortable, got behind the wheel, stuck his hand out of the door, yelled instructions at me at what I was supposed to do with the jury that he had out, and drove to the hospital.

When he got back to the courthouse he called me to come up to his office. When I got up there he told me there was three things he wanted to do, he wanted to finish the argument, to convince me that I was wrong, blamed me for deforming his, as he quoted, beautiful body, and explained that he had a high threshold of pain. The latter argument I had been convinced that he had demonstrated that very well.

That story and another story about an incident that occurred in Omaha at a state bar association I will never forget. At a particular restaurant several lawyers decided to see if they could get a reaction out of him. Because he was talking when he entered the vehicle to go back to the hotel, he didn't notice that a blind lawyer was sitting behind the steering wheel. And when the lawyer started the car up, the judge jumped out and said, I don't care that he's blind, but he's drunk.

He then started citing cases about assuming negligence in case of an accident by going with a drunk driver. He was put to the test and confessed that he was unable to think of any case where the same was true in being a passenger with a blind driver. He didn't forget the incident, and every time I made an argument that he didn't like he either called it ipso dictus Douglas or he would tell me it was my blind driver argument.

He was a most unusual and interesting person who had several of us amazed when he invited us to his home to listen to classical music. I didn't know that he liked classical music until I got to his home. Once we got there he acted as if classical music had just been invented and he was the first one to discover it. He was clapping, out of rhythm, to the classics and asking us, didn't we like it, didn't we like it? When we told him we didn't like it he asked us now was the time to go back to work.

I tell you these stories for the record to show that indeed he was a liked man and liked by many and that he enjoyed the many faces of life. He liked to have fun and made it interesting for all those around him. Yes, an interesting man who will be remembered by those of us who knew him by many such stories that I've not told.

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However, he will always be remembered by everyone for his interest in the law, his devotion to his chosen profession, and his strong desire to succeed in accomplishing the right result.

In closing, I appreciate the opportunity to be here at this memorial service. And for once I don't have to worry about that light or any questions that the Court might have. Thank you very much.

CHIEF JUSTICE HENDRY: Thank you, Mr. Douglas.

JUDGE KRIVOSHA: And for our last speaker I should like now to call upon former Deputy Attorney General Ralph Gillan, who perhaps knew Chief Justice White as well or better than anyone in that they were brothers-in-law.

CHIEF JUSTICE HENDRY: Thank you. Good afternoon, Mr. Gillan.

MR. GILLAN: May it please the Court: I think most people who knew Paul White would agree on two things: he was very intelligent, and he was a character.

I first became acquainted with him in 1938 when he was a 27-year old lawyer practicing in Lincoln and I was just entering law school. He graduated from Nebraska law school in 1932 at the age of 21 with BA and LLD degrees.

He practiced in Lincoln until 1942 when he went into the Army, the last few years officing with Ralph Slocum. He went in the Army in the spring of 1942 and after basic training went to officer's training school in Fort Benning, Georgia. He received his commission in early fall, at which time he married my sister Carol.

When he received his commission he was retained by the infantry school at Fort Benning as an instructor in machine guns and he remained there until about the end of the war in 1945. He was then sent to the Philippines to join a team of lawyers prosecuting General Homma, the Japanese general responsible for the Bataan death march, for war crimes. Homma was convicted and hanged.

Paul returned to Lincoln as a captain in the spring of 1946 and resumed the practice of law, again officing with Ralph Slocum. In 1952 he ran for and was elected District Judge and he served

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until 1962 when he ran for and was elected Chief Justice of the Nebraska Supreme Court.

His most important case as a practicing attorney was the case of Ebke versus Board of Educational Lands and Funds decided in 1951. I see many youngsters in the room under the age of 75 who probably don't remember the Ebke case so I will give you a little background.

When Nebraska was admitted to the union it was given title to two sections of land in each township to be held in trust for the benefit of the public schools of the state. The land was administered by the Board of Educational Lands and Funds and was leased to private individuals under a set formula based on appraised valuation.

Since the title was in the State there were no property taxes and the rents were usually less than the property taxes would have been. So it was often more profitable to have a school lease than to own the land in fee simple. The Legislature passed a bill providing that upon the expiration of a lease the leaseholder could get a renewal of the lease, if he wanted it, without competitive bidding.

Paul brought the Ebke case as a class action to have that statute declared unconstitutional on the ground that it required the board to violate its duty to the beneficiaries of the trust, the public schools, to obtain the best terms possible for the lease.

In 1951 the Supreme Court agreed and declared the statute unconstitutional and required the board, upon the expiration of a lease, to hold the public auction for the new lease. Since there were 5200 tracts involved and many bidders eager to lease them this has, of course, meant many millions of additional money for the schools over the years.

Upon remand to the District Court the judge ordered Paul to be paid a fee of \$60,000 but the Supreme Court vacated that order on the ground that there was no fund from which it could be paid. It's hard for us in 2003 to remember what \$60,000 was in 1951. I checked and found that in 1951 the Legislature set the salary of District Judges at \$7400. So \$60,000 was a little over eight times the annual salary of a District Judge. I saw Paul the day after the Supreme Court order on the fee and mentioned it,

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but he just gave me a wry smile and shrugged his shoulders. I never heard him mention it again.

I did not have any direct experience with him either as a District Judge or as Chief Justice as he recused himself from any case in which I was involved. But it's my understanding that during the 10 years he served as District Judge not one of his cases was reversed on appeal. One of the Supreme Court Judges, Judge Carter, I believe, told him during his campaign for Chief Justice that he was the best District Judge in the state and wondered why he wanted to trade an interesting job like that for a less interesting job on the Supreme Court.

He retired in 1978 and, until physical problems forced him to stop, spent most of the rest of his time in the great love of his life, golf. Almost anyone who knew him could relate instances of his eccentricities. And I could spend the rest of the afternoon telling my experiences in that regard. I will tell only a few to illustrate the nature.

For years he drove the most awful wrecks of cars. He had owned a car before the war and he let his younger brother drive it while he was gone. It was absolutely a refugee from the junk yard, but he always said that the motor was fine, and he drove it until at least 1950. I was reminded very forcibly of the character in Tobacco Road whose car was beat up from encounters with trees, posts and other stationary objects who always insisted: but it don't hurt the run of it none.

In later years after he was a judge, and I think after he was Chief Justice, he drove a secondhand old beater whose fenders and doors were very badly rusted. It was known throughout Hillcrest as Old Rusty. And people used to come into the locker room of Hillcrest saying, well, I see White is here, I see saw Old Rusty out in the parking lot.

One time while he was Chief Justice we had a party at my house at which we had many more guests than we had chairs. Most of the guests were standing around talking, with drinks in their hands. A particularly good friend of mine had luckily obtained one of the chairs when Carol and Paul arrived. I took Paul over to introduce him to my friend who stood up to shake hands. Paul sat down in his chair.

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I told that story recently to Judges Hastings and Blue. Judge Hastings promptly topped me. Judge Hastings, a number of years ago, was attending a conference of judges. At the dinner one evening Judge Hastings was sitting at a table with a number of other judges. Just after they brought the food to the table one of the judges was called to the telephone. While he was gone Paul came in, sat down in the judge's chair and started to eat his dinner.

One time Paul saw me in the hall at the statehouse. He called, come over here, I want to ask you something. I went over, and he asked his question. I opened my mouth to reply but had not said a word when he turned around and walked away.

He had to be watched carefully because he could never bother his head about mundane matters such as whether his cigarette was going to fall out of an ashtray on to someone's carpet or whether his glass would leave a ring on someone's end table. The bailiff of the Supreme Court told me this. Paul had two desks in his office and he used to work at one with the other behind him. He used to light his cigars while working at one and toss the 24 matches back over his shoulder to the other. Twice, I was told, he started fires in the papers on the second desk.

This even extended to matters involving his own safety and well being. I will not repeat the business about cutting off the end of his thumb which Paul has already talked about. When playing golf he often would tee off, put his club in his bag and take off down the side of the fairway while the other three members of his foursome were waiting to tee off.

There are many, many more stories of his eccentricities and some people who didn't know him well no doubt thought he was a fool. But he was not. There was nothing vicious or pompous about him. And most of those who knew him well may have laughed at his foibles, but regarded him with affection and respect. I've heard of worse brothers-in-law. Thank you.

CHIEF JUSTICE HENDRY: Thank you, Mr. Gillan.

JUDGE KRIVOSHA: Your Honors, that concludes all of the members that I've asked today to appear before the Court. I would now move the Court that the foregoing remarks be memorialized

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in the permanent records of this Court and that a copy of that record be presented to the family of Chief Justice Paul W. White.

CHIEF JUSTICE HENDRY: All right. Thank you. That motion will be sustained.

I would like the record of these proceedings to recognize several other members of this Court who are here today with us. I see Former Justice Harry Spencer, Tom White and Nick Caporale. Thank you for coming. And I see Federal District Court Judge Warren Urbom. Judge Urbom, thank you for coming. Also Judge William Rist is here with us today; thank you. I also see County Court Judge C. G. Wallace. You do honor to Judge White by your presence, and all of you do, and thank you for coming.

I will take this opportunity to note for those present that this entire proceeding has been memorialized by the court reporter. That 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 Chief Justice White. We will also forward a copy of the transcription to West Publishing for inclusion in its Northwestern Reporter.

On behalf of the Nebraska Supreme Court, I extend its appreciation to former Chief Justice Norman Krivosha, who chaired the Court's memorial committee and who, with the assistance of Janet Hammer of 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 Judge Paul White to remain in the courtroom for a moment to greet each other on this occasion. Again, thank you all for your participation in being here. And we are adjourned. Thank you.

(Proceedings adjourned.)