

Nebraska Supreme Court

In Memoriam

CHIEF JUSTICE C. THOMAS WHITE

Nebraska Supreme Court Courtroom
State Capitol
Lincoln, Nebraska
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Proceedings before:

SUPREME COURT

Chief Justice Michael G. Heavican

Justice Lindsey Miller-Lerman

Justice William B. Cassel

Justice Stephanie F. Stacy

Justice Jeffrey J. Funke

Justice Jonathan J. Papik

Justice John R. Freudenberg



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Proceedings

CHIEF JUSTICE HEAVICAN: Thank you. You may be seated. And good afternoon to everyone. And thank you all for being here. This is a memorial service and a celebration of the life and professional career of Chief Justice C. Thomas White, who was both an Associate Justice of this Court and the Chief Justice of this Court for many years. We will begin by – with introductions of the members of this Court. I will recognize the Court of Appeals, the speakers, and family members. I apologize now if I botch some names. I've got White down, but I'm not sure about some of the others. And then, we will have the presentation.

I am Mike Heavican, the Chief Justice, and now by order of seniority as to service on the Court, the other members of the Court will introduce themselves. But first, there's one member of the Court who is not here, who is the longest-serving member of the current Court, and that is Justice Miller-Lerman. She could not be here today, because she is conducting an all-important judicial selection commission hearing. But she sends her condolences, and I believe she's talked to some of members of the family.

With that, the other members of the Court will introduce themselves.

JUSTICE CASSEL: I'm William Cassel, and I happen to be the judge for the Third Judicial District. And I mention that because the late Chief Justice White served as that particular position from 1977 to 1999. So, in addition to the institutional kinship that all of us on this bench share with the late Chief Justice, I have that special connection that I remember.

JUSTICE STACY: Good afternoon. I'm Stephanie Stacy. Thank you for being here.

JUSTICE FUNKE: Good afternoon. I am Jeff Funke.

JUSTICE PAPIK: Jonathan Papik. Good afternoon.

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JUSTICE FREUDENBERG: And John Freudenberg. Good afternoon.

CHIEF JUSTICE HEAVICAN: Very good.

Members of the Court of Appeals who are with us today: Chief Judge Pirtle, Judge Riko Bishop, and Judge Welch is with us also today. And Judge Inbody – retired Judge Inbody is here.

You can wave.

(Laughter)

Very good. And I will recognize members of the family, if I can find the appropriate slip; which, of course, I cannot at this point in time. Tom White is here.

MR. T. WHITE: Yes, sir.

CHIEF JUSTICE HEAVICAN: Very good. And Michaela Macchietto.

MS. MACCHIETTO: Here.

CHIEF JUSTICE HEAVICAN: Very good. And Patrick White.

MR. P. WHITE: Thank you.

CHIEF JUSTICE HEAVICAN: Thank you very much.

And I will recognize other distinguished persons here today. I believe Judge John Gerrard, our U.S. District Court Judge for the District of Nebraska. And I believe Judge Arlen Beam is here also today. Ken Stephan, former member of this Court. John Hendry, former Chief Justice of this Court. And, with that, I'm not sure I have any other particular names, and I apologize if other members of the Court whom I either cannot see or don't recognize, but we appreciate, again, everybody being here. I know we have some district court judges and former district court judges. I'm not going to call your names out. But, again, thank you very much for being here.

With that, we will begin our presentations. Former Justice Nick Caporale is going to make the first presentation. And then, we've got two granddaughters, Reilly White and Adrienne Schleisman, who are going to make presentations.

Justice Caporale, please come forward and you may proceed. We had some deliberation about where the podium ought

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to be placed today, and I apologize. We didn't get one so that Justice Caporale could face you or face you sideways. We're just going to do a presentation the way you – we would at oral arguments. Justice Caporale.

JUSTICE CAPORALE: Your Honors, members of the White family, distinguished guests. As Chief Justice Heavican has pointed out, we pause the course of our daily lives today to remember a truly honorable man, a man who was an exemplary jurist, who served as a colleague for several of us, a mentor to me, and, above all, my friend.

He was born in Humphrey, Nebraska; grew up there; joined the Army. Upon being discharged, he used the GI Bill, which some of us remember provided educational funds, and entered the law school at Creighton University. Notwithstanding the GI Bill, money was tight, and he did not have a financially comfortable family that could help. By the time of his last year in law school, he couldn't buy books; so he relied on borrowed notes and, of course, the materials in the library. Notwithstanding his inability to buy books, he graduated first in his class.

He established a life in Columbus, Nebraska; became the Platte County Attorney; served the residents of that community in that role for a decade, whereupon he was appointed district judge, I believe, for the 21st Judicial District. It's in that role that I first met him by trying a few cases before him. And he was a demanding trial judge.

(Laughter)

He prepared to try the case before him, he expected the lawyers to be no less so, and he did not happily tolerate meaningless tactics. That said, he was a fair and impartial trial judge. He didn't interject himself into the trial and he made us better lawyers by having appeared before him.

He served in that role until he was appointed to the Supreme Court, where he served for 21 years, first as a judge thereof and, ultimately as the Chief Justice. Those who appeared before him will remember that he had the capacity to ask probing questions during oral argument and, on occasion, to make

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cogent observations, not always for the benefit of the lawyers, but sometimes for the benefit of his colleagues.

And he also had a capacity to use memorable language in his writings. For example, while a judge thereof, the Court had before it a case arising under the dog-bite statute, which among other things provides that the owner of a dog is liable for damages caused by the dog, quote, “worrying or chasing any person.” In the case before it, the dog ran around behind and in front of a three-wheeled vehicle that the plaintiff was driving. She veered to avoid the dog, ran into a fence, and sustained injury. The Court, relying on an earlier case decided before Judge White was on the Court, ruled that the statute didn’t apply, as the dog was merely being playful. As the sole dissenter, Judge White wrote that, in the prior case, the Court held that, quote, “The mens rea of a dog was an essential element in the application of the dog-bite statute.” He then wrote, quote, “The holding that we are, or any juror is, capable of judging whether a dog is, at a given time, playful or malicious is preposterous. We could, with equal reliability, predict the future from the examination of a goat’s entrails. I would reverse out of hand the holding,” quote, in the prior case.

Judge White was concerned with the impact of the law and had high respect for it. His respect for the law is perhaps best illustrated by the fact that, in raising his three children, he imbued them with such respect for the law that they all became lawyers and are all involved in the legal profession. Michaela is a professor of law at Creighton University, Tom as an Omaha trial lawyer who has served on the Nebraska legislature, and Patrick as a public defender in Illinois.

As one got to know Chief Justice White, one learned that he was more than an exemplary jurist. He was a good, compassionate, kind, caring human being. He wanted in his professional life to do what he understood the law required and, in his personal life, what was right. We were very fortunate to be able to share some time with him.

CHIEF JUSTICE HEAVICAN: Thank you very much, Justice Caporale.

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And now, we will have remarks from one of the granddaughters of Chief Justice White, that is Reilly White.

MS. REILLY WHITE: Hi there. I will just preface this with you. Given the dangerous task of handing a former public defender a microphone with no one to object on my winning this argument. So you're all in it for the long haul.

As you said, my name's Reilly. I'm one of Chief's granddaughters. My cousin Adrienne, who's 13 days older, is going to be closing out the finish after me. And I just want to note that, again, we have a lot of family here. But my brother, Logan, the eldest of the four grandchildren is here in the audience, as well as my cousin Aaron. That is Michaela's son. And Aaron just came in from Illinois where he is also an attorney. And, in terms of the family tree, which is just horrifying, my mom's a lawyer as well. But she's a corporate one, which we really think tempers out the White-family mentality.

So, as I said, I want to thank you all for allowing me to speak on my grandfather's behalf. I have looked through the ceremonial sessions that are available in the past just to kind of gain from the wisdom of the courts, and it's not often that you have an opportunity for the justices to really speak of each other and your memories. But the process of decision-making that my grandfather heralded in me the – the deepest respect for. And I know that this ceremony, in particular, would mean the world to him, because he thought so highly of his profession and his colleagues.

The first time I was in these chambers, I was five years old and my grandfather was retiring from the bench. I recall nothing of the ceremony; so, obviously, I was not speaking at it. And the last time I was in this building, however, was approximately five years ago. I had returned from college and was working at my dad's law office and had been accepted into law school. And Chief often got invites to come to various ceremonies, and he decided on this one, it would be sort of a field trip between the two of us.

So, sure enough, he drove me up from Omaha in his Buick, listening to Irish sea shanties all the way. And when

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we arrived, he walked in as if he owned the place. And, you know, we sat in chambers and he was giving tours and it was as if, immediately, he was back on the bench and so naturally in his element.

Of course, as we were in the hallways, he often thought that, due to his age, that, in some sense, he legacy or presence may have lessened over time. Of course, we all knew the power of his mustache and demeanor. It conferred a presence that stuck with you, no matter how brief the meeting; so much so that two gentlemen approached us in the hallway and shook his hand and introduced themselves and said, “You know, we’re young lawyers. I saw you out in a bar and went to introduce myself and, boy, you just absolutely scared the hell out of me.” This, of course, sort of delighted Chief. He had a little sheepish grin, ‘cause that was a power that, as Chief, when you have it, you know you’re got it and he can carry that presence where he went.

Sure enough, we entered into the nomination ceremony. I don’t recall whom, and we were joined as well by Judge Caporale. And Chief sat in the front row and encouraged Judge Caporale to pull up a chair. And I sat between them and soon, the doors opened and I found myself, a lone 20-something, surrounded by a sea of black robes, completely displaced in a sea of legitimacy. And only to look up and see that the two gentlemen who he had just “scared the hell out of” happened to be sitting members of your bench. I won’t say who, because now I’ve got to humble you somehow.

This moment, just like so many others, instilled in me a deep reverence for the law, coupled with a sense of belonging that is incredibly rare to have in the profession of law. Even now, with all of the support and the family I have in this field, it’s one that lends itself to an inviting sense of imposter syndrome. And it takes having someone really special in your corner to remind you that the pursuit of the profession is worth keeping it.

This intellectual pursuit is something that he had always encouraged in all of us grandkids. And, as a college student, I went to Loyola, New Orleans, where I majored in philosophy

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and history. My grandfather was one of few who viewed philosophy as a practical major, and we often switched our discourse from our weekly breakfast meetings into a chain of emails that continued throughout the entirety of my college career and well into law school, at which time we were roommates and basically both of us procrastinating with each other. As Chief would state, he had the greatest respect for the intellectual pursuit of truth and what he called the painful process of discovering it.

I took courses on a variety of topics which ranged from the strange to bizarre to the philosophical, and it lent itself to some very interesting conversational topics. At one point, I had a history paper, steeped in the Irish tradition, on the Molly Maguires railing on about the capitalist exploitation of coal miners in Pennsylvania. Those were our ancestors and it was something that Chief had always taken deep pride in. Sure enough, having completed this paper at the end of a semester, about 35 pages, it was long, it was no – not even a week before it had been disseminated amongst all his relatives, and his brother Patrick had sent me a copy of the DVD of Molly Maguires featuring Sean Connery.

Additionally, my senior thesis, I had focused on philosophies of punishment. My grandfather was an immensely spiritual man, and he presided over, throughout the course of his career, thousands of trials which presented themselves with immense philosophical and moral issues separate, but undoubtedly overlapping, with his duties as a lawyer. We discussed his experiences on the death penalty and signing a death warrant for Walkin' Willie Otey. His experience in dispensing sentencing, which as another opinion of his stated that equal sentencing does not equal equal justice and, if that were so, then he suggested a law ought to be made by machines and not humans.

As I graduated from college and embarked into my legal career at the public defender's, I had the incredible tutelage of Chief as my built-in tutor. We would talk through the various issues in cases I was studying and go through old case law, and

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he was more than willing to jump down any rabbit hole that tickled my fancy. After going down – through some particularly thorny or weedy issues, he'd say, "Good, I think you got this one. We solved it." Even if I had absolutely no idea what he was saying, I was often reassured by his firm endorsement. On occasion, this presented a – presented an issue when the fact that he had been a prosecutor for so long often – occasionally landed him as the leading dissenter against my position, at which point he would say, "We don't disagree. You just misunderstood it."

I recall, at one point, I was writing an appeal on a denial of a juvenile transfer to adult court. And this is really my first time grappling with some of these issues on a firsthand basis. And Chief, no matter how heavy the topic, would rather embark on that intellectual journey with you than leave you to it alone. And that sort of support and camaraderie is something I know he deeply valued as a member of the Court. Because you can't separate the law from humanity. It may make it more bearable, but it also makes the law less for it. And this transfer, I had asked Chief – he was – this kid was 16 and he had the opportunity to go to an out-of-state group home, but he was going to be sent to district court. I recall asking him his thoughts on it. And he said, "You know, if you send that – if you keep him in juvenile court, there's an incredible likelihood he'll reoffend. If you send him to district court, you guarantee it."

He had a sense of realism and an ability to see defendants, plaintiffs, as human beings. But more so than that, he understood that the lawmakers are human beings. And, oftentimes, as I went down these rabbit holes, he would remind me in contrast or studies of Aquinas and whatnot, he'd say, "Reilly, you're making the mistake of assuming the law is logical," which is both comforting and terrifying, depending on the day.

One of his favorite opinions that he often referred to was a Fourth Amendment concurring opinion in, I believe it was 1983, in which the Court had found – had found that there was probable cause for a search, but went further and adopted a totality of the circumstance approach from the United States

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Supreme Court. Chief, never one to shy away from an honest opinion or a colorful one, as Caporale noted, expressed his concerns that – of his, quote, “disturbing vision that the bedrock of our constitutional rights may only be a mass of shifting sand.” He went further to espouse that the Nebraska Constitution should have more stringent constitutional protections than the U.S. federal one.

He alluded to a passage from *A Man for All Seasons* when Sir Thomas Roper – or Sir Thomas Moore speaks to Roper and asks if he would clear down the – all the trees in the forest to get to the devil. At which point, Roper said he would. Sir Thomas Moore responded in kind that, “When the law was down and the devil turned round on you, where would you hide, all the laws being flattened? The country is planted thick with laws from coast to coast, man’s laws, not God’s. And if you cut them down, and you’re just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I’d give the devil the benefit of the law for my own safety’s sake.”

Chief paraphrasing says much and said, “Indeed the perception of the Court that the necessities of law enforcement require a more flexible view of the Fourth Amendment. The result may be a more orderly society; we will also be a less free society. As Sir Thomas Moore is reputed to have said to Roper, we have one less tree to shield us from the devil.” These sorts of conversations are things that I treasure as a grandchild, but as a professional. His ability to see the humanity in any argument is something that resonates with me as an attorney and, you know, I know will carry me through the rest of my career.

My dad told me not to ramble too long; but, again, you just gave a public defender a microphone. So, can’t say I didn’t warn you. I will just end with a couple more passages; because, frankly, no one could turn a line as well as my grandfather.

One of these I had read at his – shortly after he passed and I’ll repeat that today for those who may not have heard it. “Life is so full of surprises; many good, some not so good, and some terrible. It takes a great deal of courage to simply throw off the

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covers and emerge into the world that neither misses my company nor appreciates my entry. But the hell with them. My duty is to persist. That is why I still admire your courage. I think of your challenge to the world as like mine at age 18, to experience, be prepared to suffer pain, but not to court it. The teachers say knowledge has a bloody entrance, and it does, for every bit of knowledge separates us from the unwashed. It makes us humble when we realize that there is so much we don't know, and our fate is to learn, knowing that the acquisition may not make us happier, possibly the reverse."

Chief often – had lost so many people in his life that he spoke, again, with a deep reverence for those that came before him, as well as an acknowledgement that, at some point, we would be the ones left to carry on without him. So, I'll close with a line of his that he had praised. "Tonight is the final farewell of the Logan farewells. When I wax introspectively, I wonder how many of the goodbyes to my beloved family are final. Not that I will not see them again, but whether they will not see me again. Though my zest for life remains, the clock does not lie. And as much as I strive to prevent the inevitable, it remains inevitable. My favorite goodbye, aside from the Irish, is the Hawaiian Farewell to Thee. "The winds will echo back my sad refrain. One fond embrace before we say goodbye. Until we meet again, farewell to thee."

You've stated that parenting is the essential amateur game while grandparenting is a joyful experience. And I am so immensely grateful for the joy he brought to my life and the impact he's had on the Court. And I – and appreciate all that you've done in working to continue his legacy.

CHIEF JUSTICE HEAVICAN: Thank you, Reilly White.

Justice Cassel has some comments he wants to make.

JUSTICE CASSEL: Reilly, I just wanted to tell you I vividly remember your visit to my chambers with your grandfather. But the thing that you didn't mention is just how bursting with pride he was at you and the other grandchildren, not only on that occasion, but on other occasions. And that's very

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important for you to know, that someone who knew him, like me, could see that and see it very clearly.

MS. REILLY WHITE: Thank you. And that – on that note I'd be remiss if I weren't to note that my grandfather passed three days after I was sworn in to the bar. But it was two days before my cousin was sworn in in Illinois; shortly before my brother graduated from school; and, more importantly, my cousin, Adrienne, gave birth to her second daughter and obtained a degree of her own. And so, on that note, I wouldn't be a Chief position if I didn't humble-brag about his grandchildren. So, I'll introduce her as the next speaker.

CHIEF JUSTICE HEAVICAN: Very good. Adrienne Schleisman. I hope pronounced that correctly.

MS. SCHLEISMAN: You're correct.

CHIEF JUSTICE HEAVICAN: Welcome and thank you for being here today.

MS. SCHLEISMAN: Thank you, Your Honor.

Good afternoon. Thank you all for being here today to celebrate the life of one incredible man. For those who don't know me, my name is Adrienne, and I'm one of C. Thomas White's grandchildren. His favorite actually. And now that that's on the official Court record for Reilly and Aaron, I can proceed.

About 10 years ago, when my father was – my grandfather was severely ill, hospitalized, and preparing for death, he requested the Catholic Sacrament of Last Rites. A priest was rapidly ushered to the bedside and rather recently attempted to develop rapport with my grandfather and our family by asking my grandfather questions about who he was as a person and his life. My quick-witted grandfather, who was always onto the next thing, quickly got tired of waiting and told the priest, "Father, if you don't hurry up, you're about to lose your audience."

(Laughter)

And I'd imagine, if my grandfather was sitting here today, his advice to me delivering his eulogy would be along the same vein. So, just as an obviously horrified priest then quickly

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got down to business, I will try to keep my remarks short and sweet.

I was too young to know my grandfather in a professional capacity while he presided over this Court. To me, he was always Grandpa or, affectionately, Chief. And I'm guessing you can surmise where he got that nickname. However, I'm told he was an intimidating force. Hearing this, I asked my grandfather if he ever used his gavel during his proceedings while he was on the bench. He gruffly bellowed, "Certainly not." Then, smiling, he added, "I just tap my pencil. If I used my gavel, it would have meant that I lost control over my courtroom, and I never lost control over my courtroom." Being angry, I pressed further. "Really," I questioned, "Not once?" He chuckled, and then confirmed that he never used that gavel – his gavel in that manner. Seeing that I was still doubting his honesty, he launched into a story about when a well-respected trial lawyer, George Moyer, who is sitting in the courtroom here today, became frustrated at a ruling my grandfather had issued, so much so that he threw his pencil onto the ground, my grandfather, although admittedly amused, tapped his pencil, then said something to the effect of, "Seems that you've dropped your pencil, Counselor. You drop it again, you're going to jail."

(Laughter)

Struck between awe and amusement, I stared at my grandfather. Answering an unspoken question, he shrugged, "The power of the pencil." And as I began to write this eulogy, this phrase continued to resonate with me. And I realized, because it encompasses who my grandfather was rather accurately and concisely. And, if you'll allow me, I'd like to explain why.

My grandfather was a child of the Great Depression and grew up without as much as two nickels to rub together. Despite these challenges, my grandfather was committed to the pursuit of higher education, so much so that he enrolled in law school and spent many hours studying with many legal pads and No. 2 pencils in a rented room in a mortuary because, in his words, rent's cheap when your roommates are dead.

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(Laughter)

Despite saving on lodgings, a No. 2 pencil was about all he could afford during his final year, let alone textbooks. In spite of these challenges, he graduated first in his law school class, which is a testament to his brilliance and his work ethic.

Over the course of his life, he passed his love of education, drive, and determination down to his grandchildren. My first recollection of this was when I was struggling with fractions in the second or third grade, so much so that I brought home bad grade after bad grade on assignments, quizzes, and tests. Despite hours of tutoring provided by my teachers and parents, I still didn't get it. As my family often did during difficult times, my mother called my grandfather who, as a part-time job, ran a 24-hour crisis line from a flip phone, as my cousin Reilly says. Whatever he said meant that I was quickly shuffled downtown and found myself sitting in my grandfather's corner office with legal pads and No. 2 pencils in front of me. And approximately 30 minutes later, I walked out of that office with a great understanding of how to add, subtract, multiply, and divide fractions. And when the day of my next test arrived and my results were back, my grandfather called and I reported my success. This began a pattern that I continued even until graduate school.

When I found myself sitting in front of my grandfather once again, this time at a dining room table, with an advanced placement U.S. history book. Alongside it, you guessed it, two No. 2 pencils between us. This time, I called the 24-hour line when I realized that I was struggling and wasn't making the grades I was accustomed to. And it wasn't a question of if help would be provided, it was a demand for the textbook that I was using, a list of my assignments and tests, and an instruction to come over the next Saturday morning for tutoring. And although I didn't master that subject in 30 minutes or less, those weekly sessions taught me how to study and were instrumental in my later academic success.

During one of these sessions, he looked at me and said, "I'll be here for this until you graduate from medical school.

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After that, I can't promise anything." And at this point, I should probably disclose that I'm a pediatric nurse practitioner. Although he didn't quite predict the degree, he was accurate with regard to the doctorate.

But this unquestioning, unwavering belief that I, along with my brothers and cousins, would be successful was instrumental in our pursuit of higher education. And I'm really proud to say that all four of us have advanced degrees and are privileged and grateful that the sacrifices and dedication of one man helped make the life and accomplishments we now enjoy possible. In short, as I know I'm in danger of losing my audience, we owe him so much and we will miss him terribly.

CHIEF JUSTICE HEAVICAN: Thank you, Adrienne Schleisman.

That concludes our presenters. And I want to thank former Justice Caporale again and both granddaughters, Reilly White and Adrienne Schliesman, for recalling for us wonderful memories of C. Thomas White.

Before we adjourn, I want to add a few words of my own. I never practiced in front of C. Thomas White, but when I was appointed as Chief Justice, I made some effort to talk to former Chief Justices and other members of the Court, and nobody was more helpful and gave me more common sense about the job than C. Thomas White. We met, as I recall, and had lunch overlooking the Missouri River in Omaha one day. And he laid out many, many of the problems that I would encounter as Chief Justice. And if we were here today, I'm sure he would recognize that all those problems still persist, as they will for the next Chief Justice. But he was always very helpful and very practical.

Also, as you recall, he and Justice Caporale are at almost every bar function that occurs, at least in the city of Omaha, Nebraska. So, I would frequently see him at bar functions. And, again, he would often give me practical advice. I particularly remember, about 10 years ago, or maybe it was seven or eight years ago, when we took on the job of greatly expanding

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probation in the juvenile justice area, and he said to me, “Mike, have you lost your mind?”

(Laughter)

Again, great advice. And, from other members of the Court who used to serve on this Court with Chief Justice White, I was often told you aren’t running meetings fast enough. You should have taken – you should have taken lessons from C. Thomas White.

(Laughter)

But, with that in mind, I want to emphasize again thanking you for being here and for commemorating the Chief Justice. He was a wonderful man and he will be remembered. And he has those wonderful opinions, some of which were noted today, that will not be forgotten.

With that, the Court is adjourned. We will mix and converse with you. So, members of the family and others, don’t run away. Thank you. The Court is adjourned.