

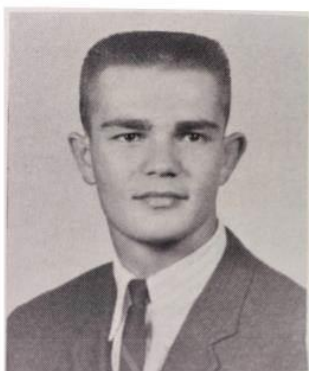
# Newsletter

## Omaha Bar Association



Vol. XLII No. 4 November 2017 (Digital Only)

## Judges Strom & Riley Hang Up Their Robes



Legal Community Celebrates  
Their Lives and Careers at  
Retirement Dinner



# President's Message

Should lawyers ignore the escalation of acrimony right now in American culture and politics? Do we want this cultural rancor to blight our profession? Or infect the process of how cases are decided?

We have something special here in Omaha. The legal profession needs to work collectively to preserve it.

The current crudeness and extreme ideals that are present on both sides of public discourse may, over time, have the propensity to trickle down and become embedded permanently in the law. The central form of reasoning in our legal system is case law precedent and analogy. One builds upon the other. Civil case law is a published compendium of judicial opinions upholding or rejecting jury and court decisions.

Jury verdicts are an example of how a group of our peers thinks about moral judgments in particular cases. Jurors are indeed buffeted by the sway of current culture.



For example, we can see the cultural effect on verdicts by looking back at the differences in civil case law from 1900-1970. During that time frame people lauded personal responsibility. The greater community good was supposed to override self-interest. However, post-World War II events have since shaped how we as a culture assign blame. Since the 1970's, more and more juries hold employers, property owners and others responsible for individual harm.

Our cultural beliefs can become ossified over time into our case law. Our case law, in turn, governs how society holds others accountable for civil wrongs. Any business will tell you that a large civil verdict is probably more effective than a criminal fine to shape future acts. Civil jury verdicts plainly have a huge impact on governing one's behavior.

I selected a state court jury in January for a civil trial. I asked the potential panel during *voir dire* where each of them get their news. Several jurors answered that they do not read the news because it is "fake." They said they trusted only themselves to determine what is true and what is not. These jurors found that the government, specifically, was untrustworthy as a relator of any fact. And this was in *January*. Nine additional months have come and gone. Anger and distrust in our public and private institutions has continued to escalate since then.

How can Omaha lawyers work toward preventing further distrust in and degradation of our public institutions? By pointing to concrete examples of how we want others to act. There is collective power in pointing to good works and saying "this is how it should be done; this is what we expect as a society."

Last month we celebrated the retirement of two of our finest federal jurists: Judge William Riley of the 8<sup>th</sup> Circuit Court of Appeals and Judge Lyle Strom of the U.S. District Court for the District Court of Nebraska. The OBA did this because Judge Riley and Judge Strom set a tone in their courtrooms and in their actions which served all of us in our community well. When we recognize judges who are both disciplined and thoughtful, hardworking and learned, and who treat people with dignity and respect, others will see this as an ideal way to govern their own behavior.

If we don't celebrate and uphold the right things, we will be drawn to the wrong things. Like a drop of water onto the pavement, small acts can collectively build into a meaningful movement. The drips become a puddle, a pond, a lake, and then an ocean. We have that power to change the world as lawyers if we all come together collectively to show the way.

A handwritten signature in black ink that reads "Anne Marie O'Brien". The script is fluid and cursive.

# Executive Director's Column

You may have noticed that this version of the OBA Newsletter looks different than those in the recent past. Since 2013, **Lorraine Boyd** has worked with the OBA as Editor of our quarterly newsletter. Unfortunately, Lorraine recently suffered a series of health setbacks related to a fall she suffered in October. Rather than stress out Lorraine with the work associated with putting together this edition of the Newsletter, it was decided by OBA leadership that I would go ahead and publish a “digital only” version to be emailed out to everyone, in lieu of the usual, better quality version seen in print and online. We appreciate your understanding for this onetime change.

The OBA has been busy since our last newsletter. In September, **First National Bank** hosted the 47<sup>th</sup> Annual Fall Kickoff BBQ at First National Wealth Management, and like usual, the event was very well attended. The OBA would like to thank longtime event chairman **Tom Gaughen** and event organizer **Nancy Lazer** at First National for all their hard work in making the event a continued success. Breaking with tradition, we held a special lecture at Creighton School of Law the afternoon following the Kickoff BBQ, to host **Dr. Tony Arend**, professor of International Law at Georgetown University's Walsh School of Foreign Service. Dr. Arend was in town visiting StratCom, and was generous enough to accommodate a fellow Hoya's request for him to lecture. Dr. Arend's lecture on “North Korea and the Preeminent Use of Force” was very timely and well-received. The OBA would like to thank **Creighton School of Law** and **Dean Mike Kelly** for agreeing to host the event in their main lecture hall, allowing us to offer the CLE at no charge to attendees.

On October, the OBA was delighted to play a role in the very special retirement celebration for **Hon. Lyle E. Strom** from the U.S. District Court, and **Hon. William Jay Riley** from the 8<sup>th</sup> Circuit Court of Appeals. Both judges/past OBA Presidents are taking “Senior Inactive” status this year; Riley earlier this fall, and Strom at the start of December. The entire legal community stepped up in a huge way to send these two pillars of the legal community off in style, as well as their two “right hand” assistants, **Kris Schneiss** (Riley), and **Jean Roeder** (Strom), who are retiring as well. The OBA is grateful to Fitzgerald Schorr Barmettler & Brennan—the law firm that both judges worked at for their entire careers prior to joining the bench—for co-hosting the event, and firm partner **Bob Cannella** for his remarks at the dinner. Thank you to **Jason Grams** and **Carol Svolos** for co-emceeing the program; and to **Dave S. Houghton**, **Robb Futhey**, members of **OLPA**, **Hon. Laurie Smith Camp**, **Andy Barry**, **Nick Thielen**, and **Hon. Lavenski Smith** for their remarks. Chief Judge Smith travelled all the way from Arkansas for the evening, and we were thrilled to have him there. Thank you to organizing committee members **Woody Bradford** and **Kate Jones** for their assistance. Also, a special thanks to our event sponsors, who were very supportive: **Cline Williams**, **Creighton School of Law**, **Fitzgerald Schorr**, **Fraser Stryker**, **Husch Blackwell**, **Kutak Rock**, **McGrath North**, **Nebraska State Bar Association**, **UNL College of Law**, **The Daily Record**, **Locher Pavelka**, and **Hon. Laurie Smith Camp**. Both Judge Strom and Judge Riley will be missed from the bench, but we look forward to continuing to see them at OBA functions.

On October 20<sup>th</sup>, the **NSBA** coordinated another “Lawyers in the City” initiative in Omaha. Thank you to all of the volunteer attorneys and legal staff who participated. Pro bono and volunteer opportunities like these are an important part of our community's outreach to provide legal services to all, and your hard work is greatly appreciated. Also in October, the OBA Young Lawyers Division hosted another “Just the Basics” Series CLE on Criminal Law at Corkscrew Wine and Cheese in Blackstone. Thank you to **Jeff Leuschen** and **Tom Gross** for co-presenting. The Basics Series has been a great success this year, and we look forward to offering more 1 hour “basics” CLEs for a nominal fee going forward.

## Executive Director's Column (Cont.)

Earlier this month, the OBA did back-to-back events for the newly admitted attorneys. On November 8<sup>th</sup>, we held our Walk Through the Courts Program at the Douglas County Courthouse and the Federal Courthouse. Thank you to those new attorneys who attended, to committee members **Will Acosta-Trejo, Ann Borer, Judge Doug Johnson, and Nicole Griffard** for their work in organizing the event, to **McGrath North** for printing the large book of orientation materials for the new attorneys, to **Sean Conway and Joe Bradley** for leading the tour of the courthouses, and to the following program speakers: **Hon. Laurie Smith Camp, Hon. F.A. Gossett, Hon. Mike Nelson, Hon. Doug Johnson, Hon. Thomas Otepka, Hon. Gary Randall, Hon. Stephanie Shearer, Don Kleine, Dave Stickman, Rob Stuart, Noelle Obermeyer, Rob Black, David Hubbard, Carole McMahan-Boies, Lindsey Bitzes, Shawn Hagerty, and Leanne Srb.** On the following evening, 25 new attorneys mingled with seasoned attorneys and judges at the OBA Membership Dinner held in the honor of the new attorneys. Thank you to **Hon. Susan Bazis** for imparting some words of wisdom on the new (and older) attorneys during the dinner, and thank you to our event sponsors: **Cassem Tierney, Erickson Sederstrom, Fraser Stryker, Gross Welch, Koley Jessen, Kutak Rock, Lamson Dugan & Murray, and McGrath North.**

In looking ahead, I am excited about new events, programs, and opportunities we are working on. Our annual Wine Tasting in January will be held at The Barn at Ackhurst Dairy, thanks to the generous offering of Barn owner and local attorney **Jill Podraza**. The event is a can't miss. We look forward to seeing you there.

New to 2018, the Omaha Bar Association is forming a new group, the Innovators' Committee. All OBA members are welcome to join the committee, and take part in the discussion and demonstrations regarding "leading edge" legal practices, business concepts and principles, and possible improvements to our legal code and procedures. It's an attempt to take a proactive to the inflection point the legal profession finds itself in as a result of accelerating technologies, changing financial pressures and costs, and changes to client expectations. Committee members will be pushed to "think outside the box" to examine ways to proactively adapt and innovate their approach to the practice of law, to thrive in the years to come. Like all OBA committees, there will be no extra fee to join; it's all included in the price of your yearly OBA membership dues.

Also new for 2018 is a new membership category in the OBA. You will see this when you received your OBA membership renewal packet in late December/early January. We have added a "Senior Inactive Emeritus" membership category for attorneys who have retired from practice. Members at this level will only be charged a modest fee, and the hope is that more of our retired friends and colleagues will join the OBA and be a part of our family. Special thanks to **Dick Lydick** for leading the recruitment efforts in this area.

Speaking of membership renewals, I'd be remiss if I didn't mention the recruiting challenge thrown down by OBA President Anne Marie O'Brien. She's challenged all members to recruit at least one new member (or lapsed member) each. For each 2018 member recruited, the recruiting attorney gets their name in the drawing for a \$100 gift card to Jams. Just make sure that when the recruits are signing up, that they let me know that you are the reason they joined!

As always, thank you for your membership and participation in your local bar association. We are here to support our members and the legal community. Please don't hesitate to reach out if there's anything we can do for you.



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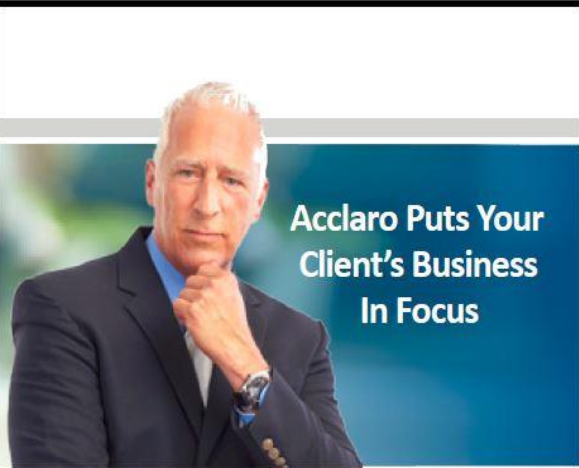
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If you are aware of anyone within the Nebraska legal community (lawyers, law office personnel, judges, courthouse employees or law students) who suffers a sudden, catastrophic loss due to an unexpected event, illness or injury, the NSBA's SOLACE Program can likely assist that person in some meaningful way.

Contact Mike Kinney at [mkinney@ctagd.com](mailto:mkinney@ctagd.com)  
and/or Liz Neeley at [lneeley@nebar.com](mailto:lneeley@nebar.com).

## ON THE MOVE

Baird Holm welcomes **Benjamin Busboom**, **David Kennison**, **Cameron Finke**, **Morgan Kreiser**, and **Sean Nakamoto** to the firm; **Kate McNamara** has joined Fraser Stryker; Dvorak Law Group welcomes **Jeff Blumel**, **Nicholas Dafney**, **Daniel Carnahan**, **Ryan Kunhart**, **Nick Meier**, and **Jayne Tyler** to their Omaha office; **Dain Johnson** has joined HDR; **Mike Ziegler** has joined Hancock and Dana; Baylor Evnen welcomes **Zach Anderson**; **Deb Gilg** has joined Time Health Management; congratulations to **Vic Padios** on his move to the general counsel seat at Nebraska Furniture Mart; **Stephanie Costello** has joined Fiedler and Timmer; Koenig|Dunne welcomes attorneys **Abbey Benson** and **David Pontier** to the firm; **Dennis Whelan** has joined Slowiaczek Albers; **Benjamin Deaver** has gone to Pansing Hogan; Lamson Dugan and Murray welcomes **Shannon McCoy** as associate; **Quinn Eaton** joined Husch Blackwell; **Caroline Nelson** is now at McGrath North as an associate; Koley Jessen added **Aly Stokes**, **Julie Ward**, **Carter Lowman**, **Annie Hartnett**, **Brian Purcell**, **Tyler Seals**, and **James Hart** to their team; Smith Slusky welcomes **Wayne Rasmussen** and **Jacob Acers** to its ranks; **Angela Forss Schmit** announces the opening of Schmit Law Firm; and Goosman Law Firm welcomes **William J. Hale** and **Elizabeth Lally** to the firm as attorneys, and **Josh White** to the firm as its Executive Director based out of their Omaha office.

## MILESTONES

Leadership Omaha's 40<sup>th</sup> Class has been announced. Local attorneys include: **Catherine Cano**, **Kasey Cappellano**, **Luke Holst**, **Amy Lawrenson**, **Alex Wolf**, and **Emily Anderson**; McGill Gotsdiner congratulates **Gary Gotsdiner**, **Keith Green**, **Mary Hewitt**, **Robert Lepp**, **Richard Myers**, **Nancy Roberts**, and **Thomas Workman** on being named to 2018's Best Lawyers in America List; Koenig Dunne congratulates SuperLawyers Rising Star **Angela Lennon**, and **Angela Dunne's** inclusion in the 2017 Great Plains SuperLawyers; Congrats to **Hon. Leigh Ann Retelsdorf** for being awarded the Service to the Community Award by the Nebraska Supreme Court; Congratulations to **Virginia Albers** on being named Fellow of the Year by the American Academy of Matrimonial Lawyers, and to **Slowiaczek Albers** for being named a Tier 1 "Best Law Firm" in Omaha for Family Law in 2018 by Best Lawyers; Congratulations also to **Badura & Wintz Law's** being named as a Tier 1 law firm in the practice areas of Trusts & Estates Law and Employee Benefits (ERISA) Law by U.S. News - Best Lawyers® for the Eighth Edition of "Best Law Firms.



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# OBA's Podcast "Bar Talk" Goes Live

After months of planning, the OBA Podcast is now up and running. Titled *Bar Talk*, the series combines: (1) interviews of legal heavyweights, with (2) lively roundtable discussions by local attorneys, with (3) recordings from our many CLE throughout the year. The podcast is a way for attorneys on the go to catch up on legal updates, listen to war stories, and enjoy the banter of discussion among attorneys...as only fellow lawyers can truly appreciate.

The Omaha Bar Association is one of less than 10 bar associations in the country with a podcast of any kind, and is looking forward to building the series into a vibrant "digital corner" of ideas and open discussion on the law, lawyering, and everything in between. Some episodes will be serious conversations about law practice in the past, present and future, such as our interviews with Judge Lyle Strom and Judge Doug Johnson, respectively. Those conversations have a lot to offer listeners in regards to substance. Other episodes look to primarily entertain listeners in a less formal and less serious manner, such as the roundtable discussions on the news of the day and pop culture. Those episodes dive deep into the legal ramifications of things like Truth In Advertising violations for labeling something fake Pumpkin Spice Latte, as well as the grim reality of the arbitration clause you agree to when purchasing a ticket to a baseball game; yet skim across the surface with the panelists' attempts to include references to as many obscure films as possible.

How can you listen to *Bar Talk*? You can find us on [iTunes](#) or [SoundCloud](#) by clicking on the linked text or by searching on the apps for "Omaha Bar Association." Click "Subscribe" and start listening. Simple as that. For smartphone listening, I recommend either the Podcast app on your iPhone, or the SoundCloud app on your Android device. If you're on your computer, you can stream the episodes via the OBA's website ([www.omahabarassociation.com](http://www.omahabarassociation.com)), under the "Bar Talk" tab at the top of the homepage.

The plan is add an episode each week. That means we need your help in coming up with content. Do you have an idea for an episode? Do you have someone you'd like to interview (or have interviewed) for the show? Email [dave@omahabarassociation.com](mailto:dave@omahabarassociation.com) to set it up. At it's core, *Bar Talk* is an open, collaborative process, that looks to connect our busy attorneys with one another, and we look forward to working with all of membership to keep the conversation going. Happy listening!

## THE DAILY RECORD

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## Nebraska Paralegal Association News

By: Kimberly Brown, ACP

The Nebraska Paralegal Association ("NePA") held its 2017 Recognition Breakfast, Annual Meeting and Fall Seminar on September 14<sup>th</sup> and 15<sup>th</sup> at UNO's Thompson Center. The two-day event kicked off with the Honorable Laurie Smith Camp who gave a magnificent keynote during the Recognition Breakfast where paralegals, attorneys, and law firm management from across the State were invited to attend. Following the breakfast, NePA conducted its formal business at its Annual Meeting. This included electing the following officers for 2017-2018.

- Bridget M. Stuhr, ACP, President
- Teri Gibbons, Past President
- Amber Roberts, ACP, President-Elect
- Sandi Armstrong, CP, Vice-President
- Jillian Tuck, CP, Secretary
- Caryn Redding, CP, Treasurer
- Kimberly Brown, ACP, District I Director
- Laurie Montag, CP, District II Director
- Angel Younger, ACP, NALA Liaison
- Katie Wibbels, ACP, Parliamentarian
- Nicole Day, ACP, Website Administrator
- Shannon Persoma, Publications Editor

Following the Annual Meeting, the seminar included presentations on the following topics:

- The Importance of Sleep and Stress Management for Paralegals
- UCC Searching and Filing – Best Practices and Common Misconceptions
- The Ethics of Limited Scope Representation
- Women's Legal Rights
- LGBTQ Youth in the Child Welfare and Juvenile Justice System
- The Unicameral – Behind the Scenes
- Cyber Safety & Security – Tips to Keep Your Client's Information Safe

NePA's District II held its November luncheon at the Green Gateau in Lincoln. Fred King, an attorney with the Nebraska State Patrol, presented on Administrative Law: Concealed Carry Appeals and Other Administrative Hearings like Carrier Enforcement & Sex Offenders. Contact Laurie Montag at [lmontag@clnewilliams.com](mailto:lmontag@clnewilliams.com) for more information regarding District II luncheons.

### **UPCOMING EVENTS:**

NePA's District I has an upcoming luncheon on November 30, 2017 at Anthony's Steakhouse in Omaha. Ryan Sothan, Outreach Coordinator of the Nebraska Attorney General's Office, will present on Elder Abuse: Protecting Date & Money from Cybersecurity Threats. This luncheon will provide a one-hour CLE opportunity for paralegals. Please contact Kimberly Brown at [kbrown@bairdholm.com](mailto:kbrown@bairdholm.com) for more information or registration information.

NePA will hold its Spring Seminar on April 20, 2017 at Mahoney State Park in Ashland, NE. If you (or your paralegal) have not attended a NePA seminar yet, this is the time to do so! You will be pleased with our speaker line-up. We have topics covering Intellectual Property, Litigation Technology, DNA Testing, and more. Visit NePA's website at <http://nebraskaparalegal.org> for more details coming soon.

As a reminder to those attorneys who have student interns working in their offices, NePA offers membership at no cost to students. NePA classifies a student as any individual currently enrolled and in good standing in a paralegal program for at least one quarter/semester at a university, college, junior college, or other school pursuing a course of study as a paralegal. Please encourage your student interns to complete the Student Membership Application at <http://nebraskaparalegal.org/membership/new-members/> and become a member today. NePA student members receive many benefits for joining!

For more information on NePA events, membership, and career opportunities, visit our website, read our e-zine the *In Brief* on our website at <http://nebraskaparalegal.org/membership/>, and check us out on Facebook @ Nebraska Paralegal Association.

## Omaha Legal Professionals Association (OLPA) Update

By Lynda Henningsen, President

On behalf of the Omaha Legal Professionals Association, I would like to extend our warm congratulations and thanks to the Honorable Lyle E. Strom and the Honorable William J. Riley. Congratulations on your remarkable careers and retirement, and thank you both for all you have done for so many in the legal community. That legal community extends far beyond the reaches of the Omaha area. Your leadership and dedication will long be remembered.

Congratulations also to Jean Roeder and Kris Schneiss, two judicial assistants who have also had remarkable careers in the law. We wish all of you a happy and healthy retirement.

The celebration on October 3rd honoring Judge Riley and Judge Strom was a special night for OLPA members. Jean Roeder, who as I mentioned was an honoree, has also been a member of OLPA since it began over 20 years ago. In 2004-2005 she was recognized as our Legal Professional of the Year. She has been a constant on our Board and has served and continues to serve on many committees. As a role model for many of our members, it gave us great pleasure to see her receive the recognition she so deserves.

OLPA has some wonderful speakers lined up over the next couple months. November will feature Patrick McNamara from McNamara Law Firm, PC LLO, and after our holiday break, Sean Conway from Dornan, Troia, Howard, Breitreutz & Conway will speak to us on criminal law. Our meetings are held in the evening beginning at 5:30 at Regency Lodge. Guests are welcome and at only \$14.00, it's great way to network, enjoy a meal and learn more about the legal community. If you would like more information about our meetings, please feel free to contact me at [lhenningsen@omahadailyrecord.com](mailto:lhenningsen@omahadailyrecord.com) or at (402) 345-1303.

Members of our Association also are often among the first to know about job opportunities within the legal community and we share that information with our membership. We also help each other with technology issues that we might be having at work with a certain computer program or "do you have contact information for this particular person?" In other words, we help and support each other whenever and however we can.

Membership in OLPA and our state association, Nebraska Legal Professionals Association (NLPA) is just \$50.00 a year. Quite a bargain. Whether one is working in a one attorney office, or a large office, legal professionals can benefit from an OLPA membership.

Once again, please feel free to contact me if you would like to learn more or have any questions. Thank you.



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**DOUGLAS COUNTY DISTRICT COURT**

**Jury Verdicts**

**March 2017—April 2017**

Compiled by Dave Sommers

**March 2017**

CI 14-9226: Alan & Jennifer Wang v. David Fehr

Judge: Hon. Shelly Stratman

Plaintiff's Attorneys: Sean Minahan, Doug Amen, Nate Tenney, Kaitlin Geyer Johnson, Elizabeth O'Connor

Defendant's Attorney: Pro Se (Other Defendants, Bryan Mick and Cohano Investments LLC Dismissed)

Case Type: Contract Dispute

Special Damages: None Specified

Verdict: \$7,500 for Plaintiff

Remarks: Plaintiffs purchased a residential property from Cohano Investments, owned by Bryan Mick. The property had been renovated by Defendant Fehr. Part of the renovations had been installing windows in the basement of the home. Fehr's renovation allegedly failed to seal the gaps around the windows' framing, instead concealed by drywall and not disclosed in the sale of the property to the Plaintiffs. Leaks around the frames of the windows caused major leaks and flooding to the house, causing damage. Defendants refused to fix problems with property. At trial, the charges against Mick and Cohano Investments were dismissed, but the jury found proper disclosures had not taken place by Fehr before the sale of the property.

CI 12-10748: Kathleen Jones v. Brian Kruger

Judge: Hon. Duane C. Dougherty

Plaintiff's Attorney: Eric Chandler

Defendant's Attorneys: Randy Paragas, James Martin Davis (withdrew)

Case Type: Sexual Assault Civil Suit

Special Damages: None Specified

Verdict: For Defendant

Remarks: Plaintiff claimed sexual assault against Defendant dated May 2009. Defendant answered that the sexual contact was consensual. Plaintiff's request for a request to the jury of punitive damages was denied by Judge Dougherty.

CI 13-9425: David LeRette, Jr., et al. v. Steven Howard

Judge: Hon. Timothy Burns

Plaintiff's Attorneys: Ronald Palagi and Donna Colley

Defendant's Attorneys: Jerry Katskee, Dave Domina

Case Type: Negligence-Legal Malpractice

Special Damages: None Specified

Verdict: Plaintiff - \$775,000

Remarks: Plaintiff agreed to the sale of his business, Master Blaster, to Johnnie Ray Anderson for \$400,000, pursuant to asset purchase agreement with a promissory note. After three monthly payments, Anderson defaults on note. Plaintiff files complaint against Anderson to recover on note, and more than 3 months later, Anderson files for bankruptcy. Bankruptcy Court, citing omissions and misstatements by Anderson, orders a denial of discharge for debt owed to Plaintiff, stay on state court action for recover is lifted, and summary judgement is granted for Plaintiff for payment in full from Anderson. Plaintiff and Anderson meet with Defendant, and Defendant agrees to represent both parties in a legal malpractice claim for \$1,000,000 against the lawyers for Anderson in bankruptcy court, Ryan Caldwell and Chris Perrone. Defendant advised Plaintiff to not execute judgement against Anderson while malpractice case was pending. Defendant withdraws from representation of Plaintiff, but keeps representing Anderson. Malpractice case was settled for Anderson. Plaintiff brings malpractice suit against Defendant, claiming Defendant never informed him of the conflict of interest of representing both Plaintiff and debtor Anderson, and for violating the duty of reasonable care in his representation of Plaintiff. Jury verdict for Plaintiff. Appeal to NECA has been filed.

**DOUGLAS COUNTY DISTRICT COURT**

**Jury Verdicts**

**March 2017—April 2017**

**March 2017 (Cont.)**

CI 15-1977: Thomas J. Murphy v. Williams J. Hughes, III, et al.

Judge: Hon. Kimberly Miller Pankonin

Plaintiff's Attorney: Bob Kirby

Defendant's Attorney: Mike Scahill

Case Type: Negligence - Vehicular

Special Damages: Tax Costs - \$2,243.41

Verdict: Plaintiff - \$2,651.92

Remarks: Plaintiff's vehicle was struck by Defendant's vehicle when Defendant allegedly failed to yield at a traffic signal. Plaintiff suffered medical damages in excess of \$10,000. Defendant Hughes Jr owned the car; Defendant Hughes III was driving the car. Defendants' Motion in Limine to exclude evidence pertaining to Plaintiff's potential loss of future earning capacity or decrease in earning capacity. Verdict for Plaintiff for \$2,651.92, and tax costs of \$2,243.41.

**April 2017**

CI 13-1165: Michelle M. Kroll v. Nebraska Methodist Health System, et al.

Judge: Hon. Kimberly Miller Pankonin

Plaintiff's Attorney: E. Terry Sibbersen

Defendant's Attorneys: Joe Daly (Nebraska Methodist), Bob Mooney (Joedy Iostas), Bill Lamson, Jr (Urgent Care of Omaha)

Case Type: Negligence – Medical Malpractice

Special Damages: None

Verdict: For Defendants

Remarks: On May 18, 2011, Plaintiff, age 49, was evaluated by Katrina Lacey at Methodist Physicians Clinic, complaining of fatigue and dizziness. Lacey diagnosed Plaintiff with a possible viral infection. The next day, Plaintiff went to Urgent Care, where Virginia Swierczek found out that in addition to dizziness, Plaintiff was suffering from vomiting, pain in left ear, pain in left side of neck, and extreme sweating. Swierczek diagnosed Plaintiff with vertigo, and advised Plaintiff to go to ER if symptoms returned. Two days later Plaintiff went back to Methodist Physicians Clinic and was seen by his primary care physician, Joedy Iostas. Iostas diagnosed Plaintiff with viral syndrome and elevated blood pressure. Two days later, Iostas was contacted by Plaintiff's family, indicating that the ear condition was better, but he was still dizzy. Iostas advised rest and fluids, but to go to the ER if symptoms worsened. The following day, March 24, Plaintiff was taken to ER at Alegent Lakeside Hospital, where a CT scan found a cerebellar stroke, and a follow-up MRI found a downward cerebellar herniation. Plaintiff died April 1, 2011. Verdict for Defendant.

CI 15-1739: Megan Parker v. Mid-City OB-GYN, et al.

Judge: Hon. Duane Dougherty

Plaintiff's Attorneys: Greg Garland and Tara DeCamp

Defendant's Attorney: Eva Jessen

Case Type: Negligence – Medical Malpractice

Special Damages: None

Verdict: For Defendants

Remarks: Defendant physicians performed a total laparoscopic hysterectomy on Plaintiff using the DaVinci robotic technique. During the procedure, the Plaintiff's bladder was injured, and pieces of fallopian tubes were allegedly left in the patient's bladder. Plaintiff required surgery to repair the bladder and remove the fallopian tube pieces left in the bladder. Defendants argued that the standard of medical care was met during the surgery. Jury verdict for Defendants. JNOV denied.

# JUDGES STROM & RILEY TAKE “SENIOR INACTIVE STATUS” FROM FEDERAL BENCH:

Community Turns Out at  
Retirement Dinner in Their Honor

*On Tuesday, October 3<sup>rd</sup>, over 300 members of the Nebraska legal community attended a reception and dinner at the Livestock Exchange Building honoring the lives and careers of Hon. Lyle E. Strom, U.S. District Court for the District of Nebraska, and Hon. William Jay Riley, 8<sup>th</sup> Circuit of the U.S. Court of Appeals. The night was filled with laughter, fond memories, and, of course, embarrassing photos. The following pages include the prepared remarks by two of the night’s speakers, Bob Cannella and Dave S. Houghton, and remarks by both Judge Strom and Judge Riley.*

## Santa Snap Poll: Who Wore it Better?



*Riley, 1990*



*Strom, 2012*

## REMARKS BY BOB CANNELLA OF FITZGERALD SCHORR



I'm Bob Cannella from Fitzgerald Schorr Barmettler & Brennan. It is our great pleasure at Fitzgerald Schorr to co-host this event for these two former partners of ours. I'd like to welcome you to this occasional convocation of Fitzgerald Schorr and former Fitzgerald Schorr lawyers. As I look around the room, I'm amazed at how many lawyers here were formerly with our firm. It's like we were a grad school for lawyers.

At the end of my remarks, I am supposed to ask Judges Riley and Strom to come up here and sit in these wingback chairs. But I'm going to depart from script. Judges Strom and Riley, could I ask you to come up here now and take a seat in these chairs, as our guests of honor? You will make better targets that way.

Before donning their robes, Judges Strom and Riley both spent their entire careers as practicing lawyers at our firm; Judge Strom from 1953 to 1985, and Judge Riley from 1973 to 2001.

I started at the firm as a runner in 1971. I have had the opportunity to work with some great people and some tremendous lawyers. I won't try to name any of them, because I wouldn't want to leave anyone out. But if I were to start listing them, Lyle Strom and Bill Riley would surely be high on the list.

To the best of my recollection, I never had the opportunity to appear in front of either of them sitting as judges, but at times I did have the chance to work closely with them as lawyers. It was a privilege in each instance, and I became a better lawyer because of it, though they might take issue with that last part.

I once heard Bart McLeay say that Judge Duke Schatz told him Lyle Strom was one of the best trial lawyers he knew. Many of you will remember Jack North and Jim Fellows. They were both talented trial lawyers in Omaha. A long, long time ago they both told me – on separate occasions -- that if I couldn't learn from Lyle Strom, then I couldn't be taught. Those are indications of the high regard in which Judge Strom was held by the local legal community back when he was a practicing lawyer.

Since Dave Sommers asked me to work on this event a number of weeks ago, it has been a trip down Memory Lane for me. I thought of people I had not thought of for a long time. People like Adelaide Wichert and her husband Al. Adelaide was Judge Strom's secretary when I first came to the firm. Her husband Al and Judge Strom used to vie, or at least rotate, in playing Santa Claus at the firm Christmas party. When Judge Strom assumed the bench, Bill Riley took over the role of Santa Claus. Judge Riley, you were a poor imitation of a Santa Claus.

You may not know or remember that both of the judges during their careers were very active in Boy Scout leadership activities. For Boy Scouts, there is an award called a Totin' Chip, and it grants a Scout the right to carry and use wood tools. To earn a Totin Chip, a Scout must demonstrate to his leader the proper handling, care, and use of the pocket knife, ax and saw, and respect for all safety rules. Well, one morning Bill Riley arrived at the office with his hand all bandaged up. It seems he was instructing his young scouts in the safe and proper use of sharp tools and quite seriously cut himself in the process. He tried to hide his injury by putting his hand behind his back. A young scout told him, "Mr. Riley, your hand is really bleeding." So much for demonstrating safe handling.

## *BOB CANNELLA REMARKS (CONTINUED)*

Judge Strom, I don't plan to talk about 1953, when you graduated from law school. I was born in 1948 and the only thing I remember about 1953 is Kindergarten Round-Up. But I did do a little thinking about 1985, when you were appointed to the bench by President Reagan. Just like today, another widely popular Republican president.

To put that 1985 date in perspective:

- The Apple Macintosh had just recently debuted. It was competing with the Commodore 64.
- In 1985, a postage stamp cost 22 cents.
- Mikhail Gorbachev replaced Konstantin Chernenko as Soviet leader.
- Nintendo released Super Mario Bros.
- Judge Strom, it was no blunder when you were appointed to the bench. But in 1985, what some consider to have been one of the worst marketing blunders of all time occurred; Coca-Cola released New Coke.
- Michael Jordan was named NBA Rookie of the Year.
- Fax machines were not in common use in the United States until several years later. It was all downhill from there. You young lawyers will never know the luxury of telling a client, "Put it in the mail to me and I'll take a look at it."

Judge Strom, during one of the conference calls to plan this event, someone mentioned, "Judge Strom does not like to be reversed." I want you to know that I stood up for you. Meaning no disrespect to Judges Smith, Beam, Benton and Riley, I said, "Just because he may have been reversed does not mean he was incorrect."

Many of you may think these fellows are pretty straight arrows. But let me ask you this: who in Omaha but Lyle Strom could count among his clients the rock group Grand Funk Railway? And what other lawyer in Omaha but Bill Riley can say he once represented *Playgirl* magazine? There are stories there, but I'll let the judges share them with you if they choose to do so.

On a serious note...in *The Common Law*, Justice Oliver Wendell Holmes, Jr. wrote, "The life of the law has not been logic; it has been experience." For you younger lawyers, I hope that during the course of your careers each of you will have the experience that I did – the chance to work with lawyers such as these two gentlemen.

At Judge Riley's formal swearing-in ceremony, I remember Joe Barmettler saying, "Bill, you do us proud." Judges, our congratulations. I'd like to paraphrase Joe and say, "Judges, you have done us proud."

Thank you both for your service and your friendship. In the days and years ahead, when you look back on your careers at the bars and on the benches, and when the last "Oyez" is called, as the Irish say, "May you never forget what is worth remembering, nor ever remember what is best forgotten."

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*Editor's Note: At the end of the retirement dinner program, Judge Riley rose and thanked everyone for attending. After a few stories of his own, Judge Riley ended the evening by quoting Hon. Warren K. Urbom's 2002 speech:*

***Honor the law, respect the law, but never worship the law.  
The law does not represent our highest standards.  
The law is the lowest common denominator;  
that is a set of rules of minimum acceptable behavior.  
And you can do better than that.***

# REMARKS BY DAVE S. HOUGHTON OF HOUGHTON BRADFORD WHITTED



In these days of chaotic and head-scratching headlines, it is so refreshing to celebrate lives of service and honor. It has been my extraordinary privilege to have worked for these two men when I was a young lawyer.

In fact, Judge Riley gave me my first case to try. I started as a tax lawyer but the practice at the firm way back then was that everyone tried a case. I remember Bill Riley showing up at the door to my office with a slender file and a characteristic broad smile. He asked if I could go to Lincoln the next morning and told me we were defending a \$500 claim which our client was perfectly willing to pay. The problem was the Plaintiff's lawyer wanted attorneys' fees that Riley was certain he could not get. So, he reasoned out loud, I should try it...since I probably couldn't screw it up.

I am happy to report the court refused the attorneys' fees request, and I considered myself 1-0 after that.

Judge Strom patiently walked me through my first jury trial. It was a car accident case in federal court. Judge Strom ("Lyle" to me then) let me close to the jury, but decided he needed to do the rebuttal so he could clear up a couple of things I had messed up.

But the greatest benefit of working with and for these two lawyers was the opportunity to observe them. I observed them as lawyers who were daily committed to the processes of the law. Their goal was to provide the finest representation that was professionally possible.

While getting a great result for the client was the goal, there were other important values at stake in every case. And, it was the affirmation of these values—case in and case out—which allows those values to remain the fundamentals of our justice system writ large.

They were committed to their community and to pro bono service, as well as to their profession. I never once heard either speak ill of another lawyer or adversary no matter how disappointing their approach or tactics might have been. I never once heard either speak ill of a judge who had made an "obviously" bad call in one of their cases.

They were as generous with their time as they were with their talent. Neither ever made anyone, including young associates, feel like an intruder; all were welcome in their office, and all were welcome at their lunch table. There is no doubt that my deep affection for lawyers and judges and the work we all do is a direct result of my exposure to Lyle Strom and Bill Riley.

When each was presented the opportunity to move from private practice to the public service in the judiciary, they were well-equipped and prepared to say "Yes."

Service on the Bench is very public; maybe the most public of all professions. Judges live with high expectations. A judge's body of work is open to all to see, criticize and, with the benefit of hindsight, to second guess.

## *DAVE HOUGHTON'S REMARKS (CONTINUED)*

Even so, Judge Riley and Judge Strom did not use the bench as a place to hide. Fortunately, like most of our Nebraska jurists, they have fully participated in professional life and the life of our community.

So it is fitting that we pause on this early autumn evening as Judge Riley and Judge Strom make mid-course changes in their lives. It is fitting for us to be grateful to these leaders of our profession. It is fitting to publicly recognize their significant accomplishments and contributions at this time of endings and new beginnings for each of them. Tonight we are privileged to say, "Well done, good and faithful servants of the cause of justice."

To be sure, there are many champions of the bench and lions of the Bar who serve among us. But they (like the rest of us), tonight and forever hereafter, will toil and strive, will win and lose, will work to honor and fulfill the promise of justice for all, while standing on the shoulders of these two gentle-but-mighty lawyers who answered the call to serve our community and our nation.

Judge Riley and Judge Strom know "Justice for all" is not something that can be achieved once and for all. Rather, we strive to fulfill that sacred promise every single day.

Judge Strom and Judge Riley, we are in your debt and we will do our best to respond to that debt by being lawyers and judges committed to the promise of justice for all—like you have—one case, one matter, one day at a time. Thank you.

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October 6, 2017

Dear OBA and the entire Omaha Legal Community:

What a great party you hosted for Judge Riley and me. I can only hope to live up to all the nice things that were said about me.

Perhaps the best part was seeing so many friends, old and new. It is very humbling to think I have been part of such an august group of professionals.

I can't think of a profession that would have afforded me all the opportunities that I had. However, they wouldn't mean as much without being a part of an organization with so many talented and dedicated individuals.

I would be remiss as well if I did not thank the firms and individuals who sponsored the reception. It was a great prelude to a marvelous dinner.

Again, thank you for hosting such a special evening for me and my family. It is a privilege to be a part of the Omaha Bar Association and the legal community of Nebraska.

Very truly yours,

Lyle E. Strom  
Senior Judge  
U.S. District Court

# As Bataillon Steps Down from NSBA Top Spot, Friends Turn Up Heat at Roast

*On Wednesday, October 11<sup>th</sup>, Judge Joe Bataillon held a dinner as the outgoing President of the Nebraska State Bar Association. As is the purview of the NSBA President, he was asked to choose the entertainment for the dinner. His response went something of the effect, "I want to be roasted, and don't hold back."*

*The notes that follow are from the first roaster of the evening, attorney Pat Barrett. A note to those easily offended: proceed with caution; these comments are meant to be taken in good humor.*

Good Evening everyone.

- Joe Bataillon is the answer to Senator Hruska's question whether "mediocre" people deserve a little representation...
- While Joe's wife Pam gets to discuss Joe's mundane personal life, I'm tasked with highlighting his legal philosophy, significant decisions, and lasting effect on Nebraska's otherwise-excellent federal judiciary.
- Affectionately known as "Let 'em go Joe" by the U.S. Attorney's Office, Joe is a proud grad of Nebraska City's Catholic Schools. It was in the confessional where he learned the withering cross examination style still employed Omaha Archdiocese's priests.
- It is altogether fitting that Joe went to Lourdes High School. His acceptance to Creighton University's Law School is one of 69 verified miracles attributable to Lourdes.
- Another miracle is how Joe was appointed to the bench without ever taking Civil Procedure or Evidence.
- As with his prior educational endeavors, Joe failed to distinguish himself academically. In 1974 he graduated "ORDER OF THE QUAFF" from Nuncio's Licorice Stick Lounge.
- Joe's first job with the Douglas County Public Defenders Office. It was the last time his clients felt like they were getting their money's worth from his representation.
- So many of Joe's clients were convicted, that at their sentencing they were issued a "SWAG Bag" filled with soap on a rope and pro se appeal form for ineffective assistance of counsel.
- Surprising only to Joe, upon leaving the PD's office his "book of business" did not make him very marketable in private practice. Rejected by Omaha's silk stocking firms...Joe was finally accepted at the "dirty sweat sock" law firm Sodoro Daly.
- There Joe started a "less than lucrative" civil career trying med mal cases, under the tutelage of the legendary Emil Sodoro (the Shawn Eichorst of judging legal talent).
- Then came Joe's appointment to the Federal Bench. He was appointed by President Clinton in January 1997. Although only one of 372 judicial appointments, Joe's appointment ranks right up there with the Marc Rich Pardon as one of Clinton's finest judicial decisions.
- When it came to Joe's federal cases, he soon got to distinguish himself on the bench. Two of Joe Bataillon's most publicized cases involved strippers and same sex marriages.
  - One is the case of US v. \$1,094,900 in US currency from 2013, in which the Nebraska State Patrol refused to return \$1 million in cash confiscated from a woman in a traffic stop that cops suspected was drug money, wads of cash tied together with rubber bands and hair scrunchies. Joe believed her story that she had been saving the money—perhaps a dollar at a time—over 15 years working as an exotic dancer.

## *Barrett's Roast of Bataillon (Continued)*

- The other case is Citizens for Equal Protection v. Bruning, in which Joe was first judge to invalidate a state amendment defining marriage as between a man and a woman. The 8th Cir. (as is its custom) reversed Bataillon. Nevertheless Joe was vindicated 10 years later with the Supreme Court's ruling in Obergefell v. Hodges.
  - However, it should be noted that Joe's rationale was different than that of SCOTUS. Joe claimed any initiative supported by 85% of [Nebraska's] 3rd District Voters must be "constitutionally suspect."

• To say Joe has an uneasy relationship with the 8th Circuit is like saying President Trump and Rex Tillerson don't always see eye to eye. The term "Moron" is thrown around on both sides. Some appellate judges must think Bataillon is French for "reversible error."

• Joe Bataillon is well-known and understood for being an underdog as one of the most persecuted and oppressed minorities, a Nebraska Democrat.

• As has been discerned from civil cases in his court, Joe Bataillon's overriding legal philosophy is "No matter how frivolous your claim or incompetent your lawyer, you are entitled to a jury trial."

• Joe's office accepts Summary Judgement Motions like they were an envelope of anthrax slid under the door. Filing a Motion for Summary Judgement makes me feel like Charlie Brown kicking a football held by Lucy.

• Joe treats uncontroverted facts like Kellyanne Conway treats true facts—with complete and utter disregard. At least Pete just sits on them forever until the parties lose interest.

Wherever Joe has been, his influence has been long lasting and deeply felt. For example,

• Since he was Chairman of the Nebraska Democratic Party, voters have not elected a democrat statewide.

• The NDP has now merged with the more influential Socialist Workers Party to achieve some electoral victories.

• When he became NSBA President Elect Elect Elect Elect, the Bar prudently decided it should no longer charge a mandatory fee to its members. Joe has set bar low for his NSBA President Tim Engler, much like what Mike Riley has done for Scott Frost.

• Even Obama passed on the chance to appoint another young Democrat to the bench for a generation, opting instead for an aging Establishment Republican to fill Joe's seat. Sad!!!

This is not to say that Joe's appointment to the bench has not had tangible effects on the legal community.

• He has revived Mediation Industry, leading John Brownrigg to join a plethora of mediators. Mike Mullin reports that not only does he handle 8 mediations daily (with a success rate of 98.23%) but that most of his referrals come on the day the case is assigned to Joe Bataillon.

I would be remiss if I did not mention Joe's strong points. (I would also be stupid because I have several cases still assigned to him).

- Joe remains the same humble self-effacing person he has always been. He takes his office and responsibilities, but not himself, seriously.
- The identity of the parties does not matter to him. Everyone is entitled to a fair hearing, even big powerful corporations.
- Great Dad and Family man - I know this because I have been sitting at the Bataillon kiddie table all night.
- He is truly a "Man for Others". He and Pam are civic and community minded.
- To have them in our community, we are blessed!

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*Just a note about the NSBA President's Dinner roast, it was great fun. Pat Barrett, Joe Grant and my wife Pam did an outstanding job. I think it made for an enjoyable and entertaining evening.*

*I have only one critique. When I planned this event I had hoped they would draw more of their material from fictional events! - Joe Bataillon*

# OMAHA BAR ASSOCIATION

## 2018 CALENDAR YEAR - DUES STATEMENT AND MEMBERSHIP APPLICATION

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_



Make all remittances to:  
Omaha Bar Association  
2133 California Plaza, Suite 150  
Omaha, Nebraska 68178

E-mail: \_\_\_\_\_

Phone: \_\_\_\_\_

### PLEASE CHECK APPROPRIATE BOX:

- Student Associate Memberships**  
Gratis. 2L & 3Ls only.
- Newly Admitted Attorneys** – Gratis.  
Will not be charged dues until after  
December 31 of the year in which they  
are FIRST admitted to law practice  
(need not be Nebraska).
- Judges** – Gratis.
- Inactive Attorneys** – \$82.50. For  
those not practicing but still working.  
Must have license in good standing.

### ATTORNEYS ADMITTED TO PRACTICE:

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\$80. Includes 2013 admittees.
- 5 years or more**  
\$165. Includes 2012 admittees
- 50 yr (actively practicing) member**  
\$80. Includes 1968 admittees.
- Senior Inactive Emeritus**  
\$25. \$40 if paper copy request of  
OBA Newsletter. Must be retired.

Graduated from (or currently attending) \_\_\_\_\_ Law School.

First admitted to practice in (state) \_\_\_\_\_ (year) \_\_\_\_\_. All Bar Numbers \_\_\_\_\_.

Year of Birth, if 35 or under: \_\_\_\_\_ (*Needed to Determine Membership in Young Lawyers Division*)

Current category listing: \_\_\_\_\_

- (a) Corporate Counsel Attorney
- (b) Government Attorney
- (c) Large Firm Attorney (10 Attorneys and over)
- (d) Small Firm Attorney (9 Attorneys and under) or Sole Practitioner
- (e) Estate and Trust Department
- (f) Other/Explain \_\_\_\_\_

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# CALENDAR

**Friday, December 8 – 2.5 Hour End of Year CLE  
@ Boys Town National Headquarters**

**Friday, January 19, 2018 – Annual Wine Tasting  
@ The Barn at Ackhurst Dairy**

**Thursday, February 8, 2018 – Young Lawyers  
Division “Champions Dinner” @ The Omar**

**Tuesday, March 13, 2018 – Medical Legal Dinner  
@ Omaha Marriott (Regency)**

Please check the calendar on the OBA's Website for more details on  
upcoming scheduled events.