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Credits to Our Profession - A Frank and Far-Reaching Interview with Judge Lyle E. Strom and Judge William J. Riley (Part Two of Two)

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Credits to Our Profession

A Frank and Far-Reaching Interview with Judge Lyle E. Strom and Judge William J. Riley (Part Two of Two)

by *Tory L. Lucas*



**JUDGE LYLE
E. STROM**



**JUDGE WILLIAM
J. RILEY**

Part one of this two-part article was published in the last issue of this magazine. If you have not read part one, I invite you to read it before you read this part. As stated in the introductory paragraphs of part one, this article captures the results of a three-hour interview that I conducted with Judge Lyle E. Strom and Judge William J. Riley in the Eighth Circuit Conference Room in Omaha on a sunny afternoon on August 15, 2005. Part one addressed the following subjects: the genesis of the relationship between Judge Strom and Judge Riley; how they made their career choices to become trial lawyers; memorable trial stories; mentoring; teaching; community service; the quality of trial lawyers; and civility and professionalism.

In this part, the interview will discuss the following topics: the judicial nomination process, including personal stories about Judge Strom's and Judge Riley's nominations; the current climate for federal judicial candidates; the makeup of the Supreme Court of the United States; appeals from Judge Strom's decisions to Eighth Circuit panels involving Judge Riley; judicial philosophies; future plans; and advice to future law clerks and to young lawyers. By interviewing Judges Strom and Riley and by publishing this two-part article, I hope to capture portions of two amazing careers that have intriguing parallels. I also hope to relay interesting stories about these two mainstays of the Omaha legal profession that undoubtedly reveal that Judge Strom and Judge Riley are credits to our profession. Please enjoy the remaining portions of the interview!

Tory L. Lucas



Tory L. Lucas is a law clerk to the Honorable Pasco M. Bowman II of the United States Court of Appeals for the Eighth Circuit. Previously, Lucas clerked for the Honorable William J. Riley, also of the Eighth Circuit. Lucas received his B.A. degree, *magna cum laude*, from Culver-Stockton College, his J.D. degree, *summa cum laude*, from Creighton University School of Law, and his LL.M. degree, with an emphasis in labor and employment law, from the University of Missouri-Kansas City School of Law, where he was the Arthur Mag Fellow of Law. Lucas has been a trial lawyer in private practice, served as a judge advocate in the United States Air Force, and taught law at Troy State University, Bellevue University, and Creighton University School of Law.

Lucas: Judge Strom, how did you become a federal judge?

Strom: In 1981 when Judge Denney¹ assumed senior status and a judgeship opportunity arose, I had thrown my hat in the ring for that position. I advised Hal Daub² that I was interested in that appointment. We were very good friends and Hal had been an associate in our law firm and worked for me at one time. This was long before his public career. I don't believe he wanted to be a trial lawyer. He really wanted to be in politics. He was only with us for a few years and then he branched out. However, Judge Beam³ received the appointment, and that decision had already pretty much been made. Arlen Beam had been Charley Thone's personal attorney. Charley, who was Nebraska's governor and a former congressman, was a good friend of President Reagan and had the inside track on proposing Judge Denney's replacement, especially since we had two Democratic senators at the time.



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After Charley Thone proposed Arlen Beam, President Reagan nominated Arlen and the Senate confirmed him. But the Denney position really was not in Omaha. At one time, we had three active district court judges in Nebraska and an informal practice was to have one from each of Nebraska's three congressional districts. So one was for greater Nebraska, one was for Lincoln, and one was for Omaha. That was sort of an unwritten practice for a long time. I don't think it is true anymore. Now when Judge Schatz⁴ received his position, everyone knew it was an Omaha appointment. When I later talked to Hal Daub about a position as a judge to fill Judge Schatz's seat, Hal went forward with putting together a biographical brochure for the White House and Justice Department in support of my nomination. I traveled to Washington for an interview. Judge Don Ross⁵ was very supportive of my nomination. He had a personal friend at the Justice Department, whom he called and made arrangements for me to meet. He and I had a very nice visit. And it turned out that his philosophies about the law and mine were about the same. Every time I gave an answer, he would tell me, "That's right." [Laughing] I then interviewed with others in the Justice Department, and it went very smoothly. Shortly after that, President Reagan nominated me and I had a hearing before the Subcommittee of the Senate Judiciary Committee, which approved my appointment. I went to a voice vote on the floor of the Senate. As was the practice at the time, I was unanimously approved by the Senate on October 25, 1985. It was six months to the day from when Duke Schatz died April 30, 1985, that I was sworn in on November 1, 1985. But I hand it to Hal Daub. He's the one who carried the water on my nomination.

Lucas: Did you get a chance to talk to President Reagan?

Strom: I talked to him on the phone. I think we had a bottle of champagne sitting around the office that day because we were kind of waiting for the call. You talk about the Great Communicator. He personally talked to me, and he knew my wife's name and he knew the names of all of my children. It was just as if we had known each other for a number of years. I guess we talked for about five minutes. He said, "I just thought you'd like to know that I have nominated you to the District Court in Nebraska." And then he said congratulations. I should have recorded that call.

Lucas: Judge Riley, tell us about your process. How did you become a federal judge?

Riley: There was an opening in the district court. I'm not sure I even knew there was an opening in the circuit court. I applied simply by sending a letter to Senator Chuck Hagel, who I really didn't even know, other than knowing he was my senator. I had not been involved in politics and I didn't know if it was a long shot, but I thought I'd send him a letter and let

him know I was interested. I asked a lot of people for support. It was very hard to ask the first person to contact the senator and later the White House to send a letter of recommendation on my behalf. It was actually my wife, Norma, who contacted Ron Roskens to see if he would contact Senator Hagel. Ron said sure he would contact Senator Hagel. Ron Roskens only did it because he knew my wife [laughing], not because he knew me. Once I saw that that went pretty well, I had the courage to ask a few other people to help. A lot of people sent letters or called to support my nomination. I then interviewed with Senator Hagel, who I was very impressed with. This was the first time I had ever sat down and talked with him. He asked me a question which I really didn't want to answer: "Is there some reason you did not apply for the circuit judgeship?" I said, "Yes." Then I just dropped it. At that point, we were interrupted. Senator Hagel left the room for several minutes, and then came back in the room, sat down in his chair, and said, "And what was that reason?"

All: [Laughing]

Riley: I thought anyone who can keep that train of thought for that long is pretty bright. I told him that I had heard that Chief Judge Richard Kopf⁶ was interested in the circuit job. I said he's the best qualified, he'd do the best job, he's a friend of mine, I would never do anything to interfere with that, and that he should get the appointment. Senator Hagel said, "Okay." And that was the end of the conversation about the circuit.

Strom: I have always thought Judge Kopf would make a great circuit judge. And I have also thought Bill really belonged on the district court. Like me, he had spent his whole life in the district court trying cases and it would have been a very comfortable transition.

Riley: Well, I was headed to the circuit. About two or three weeks after my interview with Senator Hagel, I got a call from someone on Senator Hagel's staff. All I heard from the conversation was we're sending your name along with four others to the White House. I thought, "Well, that's good." Then I asked if he would repeat that again. He repeated it, and in there what I had missed was "we're sending your name in for the circuit." I said, "Well, I'm sorry, but you must have the wrong list, because my name is not on the circuit list and I'm not interested in the circuit. I'm interested in the district judgeship." He said, "No, this is the right list and your name is being sent in." He said the White House was looking for, and I didn't know at the time but I got the impression, that they were looking for trial lawyers or something. There already was an outstanding trial lawyer on the list by the name of Fred Kauffman from Lincoln. I said, "Well, okay, but if I don't get the job, can you put my name on the list so I will still be considered for the district court?" He said, "I don't know about that."

All: *[Laughing]*

Riley: With that, he said he would check on it. He called back and said, “Yes, your name will remain on the list for the district court.” So I went back and I was kind of grumbling and complaining to Bill Brennan about how I didn’t want to be in the circuit, that I clerked for the circuit, that I knew what the circuit does, that I was a trial lawyer, and that I wanted to be in the courtroom. After listening to me harp for quite a while, Bill Brennan said, “Have you ever heard of district judges wanting to be circuit judges?” I said, “Well, yeah, sure.” He then said, “Have you ever heard of circuit judges wanting to be district judges?” I said, “No, I don’t think I’ve ever heard of that.” He said, “Well, there must be a reason for that.” This was good advice, and I thought there probably was a good reason for this. So I didn’t complain about being on the wrong list anymore. A couple of weeks later, I got a call from Courtney Ellwood of the White House Counsel’s Office, who asked me to come to Washington, D.C., for an interview. This was on a Thursday, and I was preparing for a jury trial that was beginning the following Monday in Judge Mary Likes’s courtroom. It was a very serious product liability case where a little boy was rendered a paraplegic. The thing that crossed my mind immediately was this was a joke. I said, “You know, I am starting this jury trial and I really don’t have time. I’d have to call the judge and then call the lawyers and get permission to take some time off.” There was a pause. I later realized she was sitting there thinking, “Does this guy know who he’s talking to?” She said, “We really need to have you now and I really am with the White House Counsel’s Office.” I said, “Well, I’ll tell you what. You give me your number and I’ll call you back when I talk to everyone.” She said, “Okay, my number is 202,” and I went, “Oh my goodness, this is the real thing.” I hurriedly called Judge Likes and the other lawyers, and they said it was fine with them. I called Courtney Ellwood and told her what I had done. She said she wanted to have me there on Thursday afternoon. I then said, “Whoa, wait a minute. I teach at Creighton on Thursday nights so I can’t come until Friday.”

All: *[Laughing]*

Riley: Then there was an even longer pause this time. I knew she was wondering whether I even wanted the job. She said, “Friday it is. Be here at 1:30 on Friday afternoon.” I said, “Ms. Ellwood, are you going to send me a letter of confirmation or something in an e-mail?” After another long pause, she asked, “Do you think you really need one?” I responded, “Well yes, I don’t know where I’m supposed to go, I don’t know where your office is.” She said, “It’s the White House. We’re on Pennsylvania Avenue.”

Strom: I’m surprised you got the appointment.

All: *[Laughing]*

Riley: I said, “Oh, that White House.”

Strom: Oh, God. I can’t believe that. *[Laughing]*

Riley: So with that I showed up at the White House the following Friday and interviewed with Deputy White House Counsel Tim Flanagan and with Courtney Ellwood. She looked at me kind of strangely. After the interview, I talked to Senator Hagel because he wanted to know what was going on. Then nothing happened for a while. They did all of the background checks. At that time, Senator Jeffords changed his party affiliation. The Senate, which had been in the hands of the Republicans, was now controlled by the Democrats. Everything kind of ground to a halt. But I got a call from the White House Counsel when I was on vacation in July. Although I don’t know how they found me, they told me my Senate Judiciary Committee hearing was the following week on Tuesday and that I needed to be in D.C. on Monday. They informed me that they were shipping me several boxes of materials to read. Now this was Tuesday or Wednesday of my vacation. They shipped them to me, and I spent the rest of my vacation reading confirmation hearing transcripts. During the drive home to Omaha on Saturday, I was still reading transcripts to see what other people had been asked and to see what their answers might have been. On Monday morning, I flew to Washington, D.C., with my wife.

We went in and they had a prep session. My wife really wanted to be a part of this—to see it—so we walked into this room where they were going to have our conference and some lawyers from the White House and some lawyers from the Justice Department were going to ask me questions. So I just walked in and said this is my wife, Norma, and she is going to attend to see what is going on. It was very obvious they did not want her there to avoid losing any confidentiality. They all looked at each other and said, “Well, okay.” So she sat there and they explained the process and they started doing some mock interviews and questions. Being a smart lawyer, I knew enough not to volunteer things. But I was soon volunteering all sorts of things. I was dealing with some smart lawyers from the White House and Justice Department. Everything I volunteered they just crucified me. I soon learned to give short answers. When we were all done, Norma and I started walking back to the hotel. I asked Norma, “Well, what did you think about the experience?” She said, “Well, it was very interesting.” I asked, “Do you have any tips you can give me?” She answered, “Yes, keep your mouth shut.”

“...I don’t know where I’m supposed to go, I don’t know where your office is.’ She said, ‘It’s the White House. We’re on Pennsylvania Avenue.’”
—Judge Riley

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All: *[Laughing]*

Riley: So I went and had my hearing before the Judiciary Committee.

Strom: Who was on your Committee?

Riley: Well, Senator Hagel came and introduced me and Senator Ben Nelson was also there. Both senators spoke. Senator Leahy was there at the beginning, and he was there for a while. Senator Hatch was there for a while. They then turned it over to Senator Feingold, who did most of the questioning. I'm trying to picture who else was there, but there were several senators from both parties who just kind of came and went. But the main questioner was Senator Feingold followed by a few questions by Senator Sessions.

Strom: How long was your session?

Riley: Not real long. It was probably, I don't know, maybe a half hour into an hour. I was the first appointee that President Bush nominated that made it through the confirmation process. Now I was not the first one that was appointed or nominated, but I was the first one that got a hearing. Other than Judge Roger Gregory from the Fourth Circuit who President Clinton had nominated and President Bush had renominated. Gregory went through very quickly early on.⁷ So I ended up being President Bush's first nominee who was nominated solely by him who made it through the Senate.

Lucas: What was the vote in the Senate on your nomination?

Riley: Well, I got this call from Senator Nelson's office telling me to turn on C-SPAN. And then I got this call from Senator Hagel personally telling me to turn on C-SPAN. We already had it on. Senator Hagel said, "Well, as Tom Osborne says, it's close and it's nip and tuck. Right now the vote is 44-0."

All: *[Laughing]*

Riley: The vote ended up being 97-0.

Strom: My nomination went through very quickly. But, you know, there is a very interesting story. Senator Strom Thurmond from South Carolina was the Chair of the Judiciary Subcommittee hearing my nomination. We had Nebraska's two Democratic senators—Senator Exxon and Senator Zorinsky—at the hearing. They both introduced me to the Committee and made nice comments about my nomination. Strom Thurmond asked me to sit down and the first question he asked was, "Mr. Strom, are you and I related?" Just then, the bell rang and the senators had to go to the Senate floor to vote. Senator Thurmond advised us that the hearings would be adjourned temporarily. As Senator Thurmond left the bench where the Committee sat, he asked me to join him as he walked down the hall to take the underground railroad to vote at the Capitol. As we walked down the hall, Senator

Thurmond and I had a conversation about whether we were related. Strom was his mother's maiden name and it was very common in the South. So we walked down the long hallway tracing our respective ancestors. Surprisingly enough, there is some parallelism, but it was clear that we did not have common ancestry at least as far as the Strom name is concerned. Some people have told me I should've figured out how we were related. *[Laughing]* But it was a very pleasant conversation. When we got to the end, Strom Thurmond turned to me and said, "Judge Strom, I will see you when I get back." When he returned, the hearing resumed. The questioning took 15 or 20 minutes.

Lucas: Who were the other judges appearing before the Judiciary Committee with you?

Strom: Dick Batteny from South Dakota was there at the same time.⁸ I don't recall the others. The procedures have really changed since 1985 to the time Bill was confirmed. It was really getting more controversial, and the senators were getting a lot more interested in judicial philosophies. For example, the senators did not ask me about *Roe v. Wade*⁹ or any of those kinds of things. However, the Justice Department really worked me over on *Roe v. Wade*. I just told them the Supreme Court had made its decision, and I'm certainly bound by it unless they change it. They asked me how I felt about it. I said, "I don't know if my feelings about it are very important. There are many things the Supreme Court does that I do not agree with, but that doesn't change the law. If that's the law, then that's the law that I must follow."

Riley: For whatever reason, I was the only judicial candidate who was there. And it is a little lonely up there when the two senators—Senators Hagel and Nelson—leave. While Senator Nelson was shaking hands with my son, mother, wife and friends who were there, Senator Hagel leaned over and whispered to me, "That's all I can do for you, kid. Now don't screw it up." And then he just laughed because he was just joking, I think.

Strom: Judge Richard Robinson¹⁰ had taken senior status at the time of my confirmation process. By the way, I always thought that he really was a great judge to try a case before. He had a lot of common sense, and it was just easy to try a case in front of him. Don Ross always talked highly of him. Judge Ross was an easy person for me to visit with. I liked arguing to a panel on which he sat. I felt I could communicate my position to him. But getting back to Judge Robinson, he was just a great judge to try a case in front of. He was just one of those people who had so much down-to-earth common sense. Anyway, Judge Robinson's son, Tom Robinson, was in Washington working for the government when I was going through the confirmation process. Tom came over to the hearings to visit with me, Regina, and Bryan. When Judge

Robinson died in 1991, Tom was in Omaha with other members of the family. Tom came to my chambers in the old Zorinsky building and asked if I would accept Judge Robinson's robe, which Judge Robinson's law clerks had recently given to the judge. I was pleased to accept the robe and it's the same one that I wear to this day.

Riley: Is that really true? You use Judge Robinson's robe?

Strom: Yes, and his initials are in there—RER.

Lucas: When Judge Strom was nominated, he talked to President Reagan. Judge Riley, did you get a chance to talk to President George W. Bush?

Riley: Well, I forgot to tell you that in the process, even though I know that you know the answer to that question.

Lucas: I know the answers to a lot of these questions.

All: *[Laughing]*

Riley: After I interviewed with the Justice Department and the White House, events seemed to happen in two-week intervals. About two or three weeks later I got a call on a Thursday. Courtney Ellwood called and said, "The President is going to call and talk to you within the next four days, so would you give me your telephone numbers?" I told her I would be in Minneapolis on Saturday at a wedding and would be spending some time at a friend's cabin over the weekend. We would drive home Monday. So I gave her all of my numbers. She said, "What about your cell phone number?" I told her I didn't have a cell phone. She told me I must be the last lawyer in America without a cell phone. I told her my wife and all of my kids have cell phones, but the problem with a cell phone is people can get a hold of you when you have one. *[Laughing]* The President didn't call on Friday or Saturday or Sunday. Our friends who owned the cabin, Chuck and Mary Kluver, really wanted to have the President call their cabin. We were there until Monday morning. We kind of hung around Monday morning hoping the President would call. Finally, we needed to get on the road. It was a dreary day and it started raining, and it rained for several hundred miles on our trip home. We got to a little town called Sauk Centre in the central part of Minnesota, and it's pouring down rain. When we got into Sauk Centre, all of a sudden, Gordon Todd—Gordon and his wife, Claudiana, were riding with us—Gordon Todd's cell phone rings. It was my secretary, Kris Schneiss, and Gordon told me it was for me. Kris was just frantic, and she said, "Do you know the President of the United States has been trying to call you for two hours?" I said, "Well, we haven't had a cell phone signal for at least two hours. We're in the north woods." She told me to call Ashley at such and such a number. We pulled into Mel's Body Shop, a little one-stall garage with a little office. Nobody else was there in the little parking lot. In the rain, I called Ashley, the secretary to the President, and I was going to apologize.

She cut me off just like that *[snapping finger]* and said, "The President wants to talk to you now." When the President got on, I was still in the car with all of the windows rolled up and the rain pouring down. Gordon Todd and I were in the front, and our wives were in the back. When I said, "Hello, Mr. President," they all just gasped and sucked the air out of the car. I don't know what it sounded like to the President, but it was quite a noise inside the car. I talked to the President for a little while. It wasn't long. One of the things, kind of like Lyle Strom had, was he had some cue cards or something about me. He talked with me about being a Scout Master and how much he admired people who developed youth in scouting and the great service that scouting does. The only other thing that I remember was saying, "Mr. President, it is a real honor to speak to you." He responded, "Well, I don't know about that." He went on to say he was going to nominate me. When it was all over with—which wasn't very long—Claudiana Todd said we needed to get a picture by Mel's Body Shop. She gets out and runs into Mel's Body Shop, and then we all kind of come in after her. Some guy was there, and Claudiana said, "Would you come outside and take a picture of us?" He looked outside and said, "In the rain?" Claudiana said, "Yes." Pointing at me, she said, "He just talked to the President." This guy, with grease all over him, looked at me and said, "President of what?"

All: *[Laughing]*

Strom: He wasn't impressed.

Riley: He wasn't impressed at all. But he did come out. And with that, with all of us all wet, he came out and stood in the rain and took a picture of the four of us in front of his sign that says Mel's Body Shop. We went on from there.

Lucas: It took Judge Strom one month to go from nomination to confirmation. It took Judge Riley twice as long, two months. Would you like to comment on the current climate for some of the candidates for judicial office?

Riley: I think the district courts probably haven't changed an awful lot. I think it's become very unfair to the circuit nominees, and maybe for the Supreme Court nominees, especially the way their records and personal histories are being twisted and attacked. There are legitimate reasons for challenging somebody, but I don't think the senators are always following legitimate reasons for challenging a nominee. I know from my own experience that I was being checked out by special interest groups because I had received feedback from friends who had been contacted by these groups. The problem is not only with the person who is being nominated, however, because the impact goes much further than that person. It disqualifies very qualified people from serving or even allowing their names to be considered. It used to be you might be discouraged because there might be something in your



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background that you just didn't want to deal with. But now I think it discourages even those who think they do not have anything in their background that could be the subject of an attack. They don't even want to put their families or themselves through the unjustified attacks. So you are now discouraging people who might be squeaky clean who just do not want to put themselves through the ringer. And there are also people who may not be squeaky clean, but who would make excellent judges. Everyone can't live a life of a monk—a monastic order—where you've lived close to a perfect life. We can't only put those people on the court, because that's not realistic. People have to live their lives and make some mistakes to be normal, to be human. Now the confirmation process has become way too sinister, and you now know you will be attacked.

Strom: Things changed so much from 1985 until the time Bill was nominated in 2001. And even before Bill was nominated the times were changing. Senators were interested, at least a little bit, in our philosophies. Of course, *Roe v. Wade* was still a hot issue in 1985. I think there really is a difference between a district court appointment versus a circuit court appointment. At the district court level, we are really not making the law. Our obligation is to apply the law to the facts of the case and to reach a decision. I think the circuit has a little more freedom, a little more movement, in certain areas. Obviously, they cannot decide the case in a way directly contrary to how the Supreme Court has held, but there are a lot of gray areas in the law that the circuit must address. To a certain extent, district court judges must also decide cases in those gray areas, but I think the circuit far more often gets involved with trying to read the record and then define more clearly a particular area of the law that applies to the case. They may understand a bit better what the Supreme Court has said on a certain issue. So maybe philosophies have a little more impact for circuit nominees. But my experience, after 20 years as a judge, is that every judge I've met—and we are all of different makes, kinds, thoughts and so forth—is honestly trying to do the best job he or she can to apply the law. They're not trying to make the law. I know that judges who get the controversial cases are really trying to do the very best they can to reach a good decision. But Richard Kopf has taken a terrible hit on some of his opinions. For example, Richard clearly applied the law in the decision he reached on partial-birth abortion, yet he was criticized for making the decision. We talked earlier about how qualified Richard was for the circuit position. But we knew Richard would never get the circuit job because he lived up to his oath. He did what his

"But my experience, after 20 years as a judge, is that every judge I've met—and we are all of different makes, kinds, thoughts and so forth—is honestly trying to do the best job he or she can to apply the law."
—Judge Strom

oath told him to do, and then he was criticized. I just think that at least for the circuit, the changes to the nomination process are that it is a lot more controversial—a lot more combative—arena today.

Lucas: Congress has been unwilling to approve new judgeships, particularly in the District of Nebraska. Could senior judges get Congress's attention if they simply refused to work and retired completely to demonstrate the need for more judges? Or do you think judges should not take such an active part in the political process as it relates to funding new judgeships and the like?

Riley: From the circuit perspective, if the senior circuit judges quit working, we could not function. We would be buried. Although this may not sound like much, I am assigned 38 court days for September through June. That's a lot, because

you spend two weeks preparing for a five-day session of oral arguments, and then you spend a-week-to-who-know's-how-long writing opinions and trying to resolve those cases. Those are only the argument cases. We also resolve a lot of no-argument cases, administrative matters, immigration cases, and a host of other things. Just out of curiosity, I calculated what the active judges in this circuit would do if the senior judges just stopped working, that is, how many more days I would have to sit if the senior judges' cases were just evenly distributed among the 11 active judges. I would sit 15 more days. I can't work at 53 hearing days of oral arguments

per year, because you can't prepare for them properly and then follow through with them. I don't know if any other circuits are working at that rate. If they are, they are not spending very much time on their cases, because you cannot handle that many cases and do justice to the parties and to the opinions you are writing. For example, the United States Supreme Court decides 70 to 85 cases a year in written opinions. Among our court, we decide somewhere in excess of 2000 cases. So we are diluted to a certain extent, and if you added more due to the senior judges' leaving, it would be a tremendous burden. I'm not even sure it could be done. One recourse would be to have district judges sit as circuit judges on occasion, burdening the district judges more.

Strom: Interestingly enough, I have sat on the Eleventh Circuit at least four times. Based on that experience, it seems that they usually have a senior judge or a visiting judge sit on every panel they have. At the district court, I think the same thing would happen that Bill talked about. If the senior judges

decided that because Congress is not going to address our problems, then why should we solve theirs and all quit, we'd be buried. But I could never agree to that because I took an oath. To me, I have two choices. I can work or retire as I don't think senior judges should ever just stand up and say, "We're finished." It seems to me Irving Younger used to say, "That's greasy kid stuff." Besides, I'm not prepared to do that. I still enjoy the work and the relationships too much. It gets me up in the mornings. But I do think the senior judges are the salvation right now to the federal judiciary with its caseloads.

Lucas: Do you think the difficult part of this equation is that adding judgeships never becomes a political issue, since the public does not seem to care much about the issue?

Strom: Well, that may be right because the public sees the cases getting resolved and trials being held. But I think that there is no doubt that adding judgeships is now becoming a political issue. The Senate is using the addition of judgeships as a lever to accomplish certain goals, particularly with respect to the division of the Ninth Circuit into two or more circuits. The approval of new judgeships at the present time is being held hostage by that problem. Until it gets resolved, it doesn't appear that we are going to get an additional judgeship in Nebraska, although it is clear that we are entitled to one. I see this problem of the need for additional judgeships in the districts where I have been asked to assist. I see it in the Middle District of Alabama in Montgomery, but I particularly see the problem in the Northern District of New York, where there is a tremendous backlog of prisoner cases and of some civil cases. I started receiving cases in the Northern District of New York several years ago in about 2003. The cases I was receiving had been filed in the mid-1990s and simply could not be reached because of the workload in that district. I recall I had one case set for trial that was filed in 1993, so it was about 10 years old. I had it set for trial in Albany, NY, in 2005. Shortly thereafter, the attorneys told me, "We may not be ready on that date." I advised them I thought they had enough time to prepare the case since 1993, and the trial schedule would not be changed. The parties called me a couple of days before the trial to tell me they had settled the case. The case demonstrated the old adage that the way to get cases disposed of is to set them for trial.

Lucas: Let me switch gears, and, in doing so, give you some information on the makeup of the Supreme Court as of today, August 15, 2005. If Judge John Roberts of the D.C. Circuit Court of Appeals¹¹ is confirmed to the Supreme Court of the United States, eight of the nine justices will be former federal circuit judges—four from the D.C. Circuit, two from the First Circuit, one from the Seventh, and one from the Ninth. The other member is Chief Justice William Rehnquist,¹² who came from the U.S. Department of Justice in D.C. [Note: Since this interview was conducted, Justice Sandra Day O'Connor¹³ retired from the Supreme Court and Chief Justice Rehnquist died.

Their seats have been filled by Justice Samuel A. Alito Jr.¹⁴ and by Chief Justice John G. Roberts Jr., respectively. All nine of the current Supreme Court justices have been elevated to the Supreme Court from circuit judgeships.] Let me ask you a couple of questions concerning these facts. In a portrait hanging over my right shoulder is Judge Richard Sheppard Arnold,¹⁵ a former Eighth Circuit judge who President Clinton seriously considered for a spot on the Supreme Court. You'll also notice another portrait hanging in the hallway there, a portrait of Justice Harry Blackmun,¹⁶ who President Nixon appointed to the Supreme Court in 1970. Justice Blackmun, who had served on the Eighth Circuit from 1959 to 1970, is the last Eighth Circuit judge to be elevated to the Supreme Court, so it has been 35 years. Do you think the Midwest and particularly the Eighth Circuit get much attention from the folks in our Nation's capitol when considering candidates for the Supreme Court?

Strom: Well, they certainly did with Richard, but I think his health impacted the decision not to appoint him to the Court. We were having a meeting with Eighth Circuit chief judges when he was being considered. Richard presided as the chief judge of the Eighth Circuit and I was the chief judge of the District of Nebraska. It was my time to host this meeting in Omaha. Richard's potential nomination to the Supreme Court really became a topic of conversation among the judges because he was in direct contact nearly every day with the White House. Who received the nomination?

Lucas: President Clinton considered Judge Richard Arnold for Justice Blackmun's seat, but Judge Stephen Breyer of the First Circuit¹⁷ received the nomination.

Strom: To me, Richard was one of the brightest thinkers. I sat with the Eighth Circuit a number of times when he was chief judge, as they were using both active and senior district judges quite a bit. Richard wrote so well, and he would have made an absolutely great Supreme Court justice. All the work he did with the Judicial Conference, and particularly as the chair of the budget committee, where he worked on the budget for the entire federal judiciary and testified before Congress in seeking its approval. He did an excellent job.

Riley: I guess we will never know for sure who the White House is considering for the Supreme Court before they announce the person chosen for the nomination. But the population is on the coasts, and we've had our shot. We've had Justice Blackmun, Chief Justice Burger,¹⁸ Judge Richard Arnold, and Tory's future boss, Judge Pasco Bowman,¹⁹ who was on the final list of three for the position now held by Justice Kennedy.²⁰ So we have certainly been considered. But I do think that there may be a bias and that we ought to get more consideration.

Strom: In a way, Justice Clarence Thomas²¹ was from the Midwest. He had been in Missouri with the Attorney General's



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Office, and he married a woman from Omaha, who incidentally went to Creighton Law School and worked with Hal Daub. By the way, I was in St. Louis arguing a case when Blackmun was nominated to the Supreme Court. The news of that just about brought business to an end that day. Judge Lay²² was down there and he was so excited, as he and Blackmun were very close friends.

Riley: I think what the Supreme Court might be missing more than regionalism is people who are experienced in dealing with clients and handling clients. And actually having practicing lawyers—trial lawyers would be great—but any lawyer. I don't necessarily mean just a corporate lawyer, who mostly dealt with other corporate lawyers or general counsel for a company, but someone who had to deal with people, someone who had to deal with clients and who had to look the client in the eye. There's a certain sort of elitism, at least a perception out there, that if you come from academia, a federal judgeship, Washington, D.C., or some other big city, then you are considered more qualified. Whether that's true or not, I don't know, but there might be that perception out there. It seems like it could be helpful to have some candidates who have had some practical experience.

Strom: Judge Roberts comes pretty close, at least closer than many, to having clients. He's worked a lot for the government, but he's also worked in the private practice. I have a feeling he is a really good appointment.

Riley: Now I'm not that familiar with all of the justices who have served, but if you go back, I can think of Justice Powell.²³ He was in the American College of Trial Lawyers.

Strom: And president of the American Bar Association.

Riley: He dealt with real people as a practicing lawyer, and may not have been part of the so-called elite class.

Strom: John Marshall²⁴ also comes to mind.

Riley: To me, I think they should consider someone with some sense of practicality.

Strom: I agree. I think they need to get away from always looking at the circuit courts as a source for nominees. And even district courts as far as that goes. They need to look outside the federal judiciary and get a little bit of a mixture in there, instead of just federal appellate judges. I'm just not sure that is the best for the Supreme Court.

Lucas: If you look at the current makeup of the Court [on August 15, 2005], only Justice O'Connor and Justice David Souter²⁵ have experience as trial court judges, as both were state trial court judges for four years. Justice Charles Evans Whittaker²⁶ was a federal district court judge in Kansas City before he went to the Eighth Circuit and eventually to the Supreme Court. In the current climate and during the past few vacancies, it did not seem like trial court judges were being

considered much. Would you like to see more district court judges being considered, especially judges who have worked hard to try to apply these confusing Supreme Court opinions?

Strom: It certainly wouldn't hurt to have someone from a trial court there who understood what the problems actually are. That's why getting circuit judges out of the practicing bar rather than from district courts might be good, as moving judges up might be closing doors a little bit. You get Bill who has tried cases ever since he left Judge Lay and then you nominate him to a circuit position. He brings all of that knowledge and experience and far greater understanding of the problems that face the practice. He sees those problems like district judges see them, but now he sees them from a little different perspective. I think Bill has made a great point. There really needs to be someone, and not all of them, on the Supreme Court who bring experience from the private practice where he or she has dealt with the problems. A decision that the Court makes some way or the other has to be administered, and it has to be first considered by a district judge and then circuit judges. If they had experience as practicing lawyers, I think they would do a better job.

Lucas: Judge Riley briefly touched on candidates from academia. It might be fair to say that the academics probably are Justices Antonin Scalia,²⁷ Ruth Bader Ginsburg,²⁸ and Breyer.²⁹ Justices John Paul Stevens³⁰ and Kennedy³¹ devoted time teaching in adjunct-type positions like the two of you do. I do not believe Chief Justice Rehnquist or Justices O'Connor, Thomas, or Souter had done much in the academic arena before ascending to the Supreme Court. Of course, Justice Thomas now teaches a class at Creighton Law School with Professor Mike Fenner³² and other justices teach at various schools. Is academia a proper place to look for Supreme Court candidates?

Riley: Judge Bowman, who was on the short list for the Supreme Court, was an academic,³³ and he would have been a great choice for the Court.

Strom: Yes, he came from academia, and so did Buzz Arnold.³⁴ I think all of his experience came from academia. They're not on the Supreme Court, but would have been fine candidates.

Lucas: And I think that is probably where it gets difficult in making generalizations about what types of backgrounds are required to sit on the Supreme Court. For example, if you contend more practicing lawyers need to be considered, there are, of course, many judges and academics who are supremely qualified, and vice-versa. Judge Riley, you have now been on the court for four years. Judge Strom, you have been on the district court for nearly 20 years. When you first got on the bench, which judges did you try to emulate? Which judges have been your role models or mentors?

Strom: Judge Urbom³⁵ and Judge Robinson are the two that I consider to be my mentors.

Riley: I know another one who was your mentor, and that is Judge Van Pelt.³⁶

Strom: Oh, yes. I also remember a state district court judge who maybe was not the smartest judge, but he was one of those people who innately knew what was right and what was wrong. He was a state district court judge, do you know who he was?

Riley: Douglas County district court judge? Judge O'Brien.

Strom: Judge Zibby O'Brien. Zibby was probably reversed less than any other district court judge during the time he was on the bench. And not because he was a brilliant legal mind or scholar, but because he just knew what was right and what was wrong. Judge Robinson was smart, and he too had the ability to innately know what was right or wrong. In my experience, Judge Urbom is one of the finest judges I was privileged to try cases before. He is a brilliant man, in the same category as Jim Brown, one of my former partners, who was also a very brilliant man. There are others. Judge Delehant³⁷ was extremely brilliant but he was on senior status, so I don't believe I ever tried a case before him. To wrap up the answer to this question as far as being a judge is concerned, Judge Urbom, Judge Robinson and Judge Van Pelt all knew how to conduct themselves with great dignity. That is certainly important for any federal judge.

Riley: I thought I was going to be a district judge, so it was easy to follow the judges that I knew the best. They weren't exactly those in my peer group or age category. They would be Judge Strom and Judge Urbom. I knew Judge Van Pelt a little bit, but I knew Judge Strom and Judge Urbom the best. When I came to the circuit, I found out the circuit is a lot more in the business of making policy-type decisions. I didn't know if I was a conservative or a liberal or a middle-of-the-road judge. I didn't know where I was on all of these issues because I hadn't touched them since law school. I'm talking about issues such as civil rights, employment law, criminal law, or whatever it might be. I try to follow the law whenever I can when Congress, the Supreme Court, or our circuit says what the law is. But it always seems like there are cases or issues that come up that nobody has answered. I really hadn't studied the issues from the perspective of an appellate court. When I got on the court, I really admired—well, I really admire all of the judges on the court. So I probably shouldn't say anybody sticks out more than another. But there are certain people that you find yourself following. I found Judge Beam to be incredibly helpful in getting me started. I don't know how I would have gotten through the first six months to a year without Judge Beam. Just routine matters, not how you decide cases, but how you conduct yourself as a circuit judge. On the court, Richard Arnold, Morris Arnold, Kermit Bye,³⁸ Roger Wollman,³⁹ Diana

Murphy,⁴⁰ Jim Loken,⁴¹ and the list goes on, are very brilliant individuals that you just kind of wonder what their views are on an issue. They are such strong thinkers and deep thinkers and know the law so well. I sat a lot with Roger Wollman and David Hansen,⁴² whom I admire. They all have different strengths.

Strom: What about Bud Bowman?

Riley: I didn't sit with him a lot at the beginning, but I have sat with him more recently. There's nobody more pleasant to sit with than Bud Bowman.

Strom: It's really the same when you talk about the district judges. Whether it's Joe Bataillon,⁴³ Richard Kopf, Laurie Smith Camp,⁴⁴ or Tom Shanahan.⁴⁵ Or our fine magistrate judges, F.A. Gossett⁴⁶ and Tom Thalken,⁴⁷ or our bankruptcy judge, Tim Mahoney.⁴⁸ I get to spend time with them. They're all different, but they are all extremely graceful. They are really considerate of what other people think. Now they all have their own ideas and may not agree on everything, but everyone is very respectful of one another. When I served as the chief judge of the district, I would associate with other chief judges of the circuit. And you never ran across anyone who wasn't really gracious. There was never any backbiting. Everyone was respectful of others, and that's what I get when I sit with the Eighth Circuit and when I sit with the Eleventh Circuit. They're like all the rest in that they are just trying to do the best they can. And they are very considerate of your thoughts and of what your opinions are whether they agree with you or not. They really want to know what you think about an issue and why you would make a certain decision. We just have a very collegial court, which makes working here in the Hruska United States Courthouse a very enjoyable experience.

Riley: I also am very happy to sit with the Eighth Circuit where, with few exceptions, we are a very collegial court where all of the judges strive to be respectful and civil to other judges and their staffs. But I know there are other circuits that are not that way. The only reason I know about them is that I hear they make it a very difficult life. The Sixth Circuit is what I understand to be a tough circuit. But to answer your question, Tory, I guess I do not model myself after anyone. I am in a learning curve and try to take what's best from a group of judges who all have tremendous strengths. Obviously, you can't increase your brain power, but you can increase your knowledge of the law and your ability to deal with issues. Having clerked with Judge Lay, I obviously learned something about the process from him. I certainly respect and admire him. And everyone else on the Eighth Circuit for that matter. But if I had been a district court judge, I think I would have known so much about Judge Strom and Judge Urbom that I might



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have experienced more of a modeling influence. But on the circuit court I have really just tried to learn a little bit from everyone on the court.

Lucas: I did a little research on the number of times Judge Riley has sat on a panel reviewing Judge Strom's decisions. There are 19 of Judge Strom's decisions [*note: 22 at the time this went to press*] that have been appealed to the Eighth Circuit and reviewed by a panel on which Judge Riley sat. All decisions have been affirmed.

Riley: That was a mistake.

Strom: That proves how smart he really is.

All: [*Laughing*]

Lucas: Judge Riley authored four of those opinions for the Eighth Circuit affirming Judge Strom.

Strom: And one of them Don Lay dissented on.

Lucas: That just happens to be *Orr v. Wal-Mart*,⁴⁹ which dealt with a pharmacist with diabetes claiming he had a disability under the Americans with Disabilities Act.

Riley: I want you to know I affirmed Judge Strom in that case. *Orr v. Wal-Mart* was interesting, not only because it was the first case I had to review from Judge Strom, but I was on a panel with my former boss and mentor, Judge Lay. And Judge Lay and I disagreed on the result. I don't remember who was on the panel with me,⁵⁰ but I wanted to affirm and Judge Lay wanted to reverse. Judge Lay, in his dissent, referred to the majority—my—opinion was . . .

Strom: Myopic.

Riley: . . . Myopic.⁵¹ As I recall, there was an *Omaha World-Herald* article that read something to the effect that majority writes myopic opinion. So here's the first time I get my first dissent and the first time I reviewed Judge Strom's opinion and affirmed him. I went immediately downstairs to Judge Strom's chambers to tell him I had to write a myopic opinion in order to affirm him.

All: [*Laughing*]

Riley: Another case was *United States v. Fellers*.⁵² Judge Wollman wrote the opinion, but I wrote a concurrence saying that Judge Strom got the right result for the wrong reason. The Supreme Court ended up agreeing with me and sent it back down to us. I wanted to send it back down to Judge Strom to try to get it right this time. [*Laughing*] On remand, Judge Wollman again wrote the opinion. We apparently got it right that time.

Lucas: Have you ever thought about whether your judicial philosophies are similar?

Riley: No, I haven't thought about that. [*Laughing*]

Strom: Neither have I. [*Laughing*] I don't think much about judicial philosophies. But I always thought that Don Ross and I communicated well. Now that might be because our philosophies were similar. And whenever I saw that Don Ross was on the panel reviewing my decision, I knew that I had someone on the panel who talked the same language that I do and would know what I was trying to do or what I was talking about. I think I generally had pretty good luck with Ross.

Here's an interesting story. I remember arguing in St. Louis before the Eighth Circuit as a lawyer. We had tried a non-jury case in front of Judge Urbom, who decided against us. We appealed to the Eighth Circuit. Ted McMillian⁵³ was presiding judge and I can't remember the other two. I got up to argue and I said, "Now I'm not arguing with Judge Urbom's decision, but . . .," and that was all the further I got. Judge McMillian looked down at me and said, "Mr. Strom, that's very smart." So we went on. At that stage, it got into—and it was the only time it ever happened to me at the circuit—a situation where McMillian, I, and opposing counsel engaged in a tri-partite discussion just back and forth. Judge McMillian said, "I'm going to refer this case to John Martin⁵⁴ to see if you can negotiate a settlement." Subsequently, we all went to St. Louis. At the end of an entire day, I had to leave to catch my plane. I said I was sorry that we could not settle the case, told them what we could do, and said I thought it was fair to everybody. And then I left. As I was walking down the steps of the old courthouse, John Martin came running down the steps after me yelling, "Mr. Strom, Mr. Strom, wait a minute. We settled." Boy was I tickled. But I've never been to the circuit where you just get into a round-table discussion. No more arguments, just a discussion. Judge McMillian is a really good judge. [*note: Judge McMillian died on January 18, 2006*]

Riley: Oh, yeah. I've really enjoyed sitting with him and getting to know him. He still sits, he's on the calendar, and he's handling administrative panel matters. His ability to get out—say to go to St. Paul or other places—is limited due to health issues.

Lucas: In the 1970s when you two were trial lawyers, did you ever dream about both becoming federal judges, much less in the same city in the same courthouse at the same time?

Strom: If Bill did, he was the only one.

All: [*Laughing*]

Strom: In those days, I don't know if I was even seriously considering being a judge. I don't know. Maybe, I guess when Denney was appointed in 1971. And then Richard Dier⁵⁵ was appointed in December of 1971 and died in December of 1972. I think at the time that Denney was appointed I began to think about it. I thought that the district court was a position I wouldn't mind having if it ever became available. Of course, after that, there wasn't an opening until Denney died, and that's

when Beam was appointed, and I really think that was sort of predetermined. And then Duke Schatz died, and I called Hal Daub, and I guess it was in the cards at that time. Hal took it from there. I had some great interviews in Washington during the confirmation process. Then there was some talk about holding the nominations up. Some dispute over the military appointments. Then we got word that the commission was in the mail, but I hadn't received it when I was sworn in. Judge Urbom made some comment that he had been advised by me that the commission had been signed by the President and Attorney General and that it was in the mail. Trusting in that, he went ahead and administered the oath to me.

Riley: I didn't really think about becoming a judge. Having clerked for Judge Lay, I just thought that being a circuit judge, and even a district judge, was just out of the question. That was the pinnacle of the law that I considered a person could achieve and not even aspire to achieve. But as the years went on, I would have to say I never thought about being a judge other than on occasions when I was in trial and would walk out of the courtroom thinking, "Now I know I could have tried that better than that judge." *[Laughing]* So it would have been in the back of your mind and you think that you could do that job.

Strom: You can't try cases and be involved in trial work like Bill and I were—that was really our sole professional life—without beginning to think that you could do a good job as a judge. It was really kind of a final culmination of the practice of law. In addition, there is no mandatory retirement age for judges as there was at the Fitzgerald firm. Here I am able to continue working as long as I am able and feel that I am doing an acceptable job. Senior status is a real boon as I am able to reduce my caseload, I am relieved of all types of administrative responsibilities, and as long as I remain competent, I can continue to work. Now there are certain people I won't call upon for competency rulings.

All: *[Laughing]*

Lucas: If you would not have received an appointment at the federal level, would you have been interested in a judgeship at the state level?

Strom: No.

Riley: I don't think so. I only would have considered it as a sort of retirement job. But you can't get it that way. It can't be one of those things where you think you will get it when you are 65. I think an appellate position in the state court system—like the Nebraska Supreme Court or the Nebraska Court of Appeals—is a good position. Now when I refer to retirement as a district judge, I know that those men and women are

working hard in a very broad spectrum of the law with very minimal support.

Strom: Now there are great people over there. It's not because of the people. I think we've got as good a district court in Douglas County as we've ever had. I operated under the old system where they were elected and it was a disaster. The Missouri Plan⁵⁶ has been an absolute lifesaver. The reason I'd never do it is because I hate divorce work. I was caught up in a number of divorces involving property, and they're just dog fights and they never end. I just thought that if I went on the state district court bench, about 40% of my workload would involve divorces and I just never wanted that. So I took this job and now we have section 2254 and 2255 cases.⁵⁷

All: *[Laughing]*

Strom: And section 1983 cases,⁵⁸ and none of these cases ever end. They just go on and on and on. I've got one plaintiff who thinks he's the President of the United States. I don't know how many times I've thrown him out of court. *[Laughing]*

Riley: You might think at the circuit we don't get all of the state-court type cases, but we get our fair share of them. But seriously, the state district court probably has a broader spectrum of matters that they handle than does the federal court. They have workloads that are as great or greater, and they don't have the support that federal judges have. Federal district courts have two law clerks and the circuit judges can have as many as

four clerks. Although the state district courts are getting some clerks they are sharing them. I admire state district court and county court judges because they are making a lot of decisions and very difficult decisions with very little support.

Strom: Look at Judge Moran. He gets very tough cases. I think Judge Moran is as good a district court judge as you can get. And there's just no limit to a state court's jurisdiction. For me, I have a limit. I always ask people to tell me the authority for me to take jurisdiction. They don't do that in state court. If a person is subject to service within the state, they are subject to the jurisdiction of the court. Just a much broader jurisdiction.

Lucas: They certainly are the ultimate courts of general jurisdiction, and they even share jurisdiction with you most of the time. I know you have been talking for quite a while. I have a few questions remaining. What are your future goals and plans?

Strom: I just want to continue doing what I'm doing as long as I am able and as long as I keep enjoying it. I don't have

"You can't try cases and be involved in trial work like Bill and I were ... without beginning to think that you could do a good job as a judge."
—Judge Strom

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any plans for a full retirement. I probably will continue to reduce my caseload as we go on so I can spend more time traveling and visiting my family.

Riley: And golfing.

Strom: And golfing. But I would hate to make golfing a full-time occupation. I would go crazy if I had to play golf every day. I need something else in my life that is more challenging. But as much as I love golf, it's purely recreation. It's not a way of life.

Riley: I'm just starting my second career. It will be four years tomorrow. I will have the opportunity within a few years—four years or something like that—to become the chief judge of the Eighth Circuit. Having watched what the chief judge does, I'm not so sure I want that challenge. Part of the equation that enters into that decision is, at least in recent memory, Nebraska has not had a chief judge of the circuit. Maybe they had one a long time ago . . .

Strom: What about Don Lay?

Riley: Well, he wasn't in Nebraska at the time. He was in St. Paul. As far as I know, I don't think Nebraska has had a sitting chief judge of the circuit. I certainly feel some obligation to that, but it's not something I look forward to.

Strom: It's harder today, Bill, than it used to be. The same thing is true at the district court. I wouldn't want to be chief judge today. There's just too much administrative detail.

Riley: The chief judge has a lot of jobs, such as budgeting for a seven-state federal court system, judicial complaints, reviewing all of the C.J.A.⁵⁹ expense applications, dealing with problems that come up administratively or personality-wise or whatever. I would serve as chief judge if given the opportunity, but I'm not sure I'd do it the full seven years. I also think I'd take senior status when I could. I would enjoy taking senior status because I would take a reduced share of circuit cases and would try cases in the District of Nebraska.

Lucas: I don't think everyone reading this interview knows that you sit by designation trying cases in the district court as well. Do you still want to be a district court judge when you grow up?

Riley: I definitely would take the opportunity to cut back on circuit work and do more district court work if I could.

Lucas: Judge Strom, in addition to your docket here in the District of Nebraska, do you plan to continue to sit on other district courts such as in Alabama or New York or with circuit courts such as the Eleventh Circuit?

Strom: Oh, yes. Alabama is one of my favorite places to go. I have always enjoyed going to North Carolina as well, but the chief judge of the Fourth Circuit refuses to allow senior judges from outside the circuit to assist the district courts. So it has been some time since I have had the privilege of going to

Charlotte to try cases. I have been working with the Eleventh Circuit for several years. They frequently use district judges, particularly senior district judges, as the third member of a panel. So I have had the opportunity to sit with them four or five times. I hope I can continue to do so as I think the appellate process provides a great experience for the law clerks and gives them the opportunity to see how it works. But I have to admit that I'd hate to do it full-time.

Riley: That's because he likes to make up his own mind rather than look for two minds to convince.

Strom: Well, sooner or later whatever I've done has to be condoned by at least two other minds.

Lucas: If law students or young attorneys are reading this interview and are thinking about applying for a clerkship with you, what would you tell them? What attributes do you seek when hiring law clerks?

Riley: I look for (1) signs of superior intelligence in grades and accomplishments; (2) excellent analytical ability; (3) superb writing skills; and (4) the intangible of a personality I would enjoy spending the next two years with.

Strom: My answer to this question is substantially the same as Judge Riley's. I believe that law school performance is a good guide, particularly if I see that they are growing and improving from the first to the third year. I want to review writing performance other than law review articles as I believe this is better evidence of their writing skills. Finally, I want to be sure that they will be compatible in our chambers. We are a small group and I need to be sure we will all work effectively and efficiently together.

Lucas: Finally, what advice do you have for young attorneys reading this interview?


Strom: The legal profession has always been very competitive and I believe it gets more competitive each year. This doesn't mean that we should not always conduct ourselves as professionals. The essential attributes of professionalism are integrity and civility. They should be the cornerstones of our practice. I believe that if we keep this in mind, our careers as lawyers will be successful and satisfying.

Riley: Remember we are professionals; zealously represent your clients within the law; maintain the highest ethical standards; work hard; and play hard. And some of your greatest joys will come from service to others, your community, and the bar.

Lucas: Thank you very much for taking the time to chat with me. I hope the readers of the *Nebraska Lawyer* magazine enjoy this interview as much as I did conducting it.

Strom: Now, Tory, you're going to Judge Bowman, right? You are free to show him the remarks we made about him, because they are very favorable. [*Laughing*]

Lucas: I'm sure he will be pleased to read about the nice things you said about him. Thanks again for allowing me to interview you this afternoon. I thoroughly enjoyed it.

To me, the law's future must be built on its past. Students of the law can be helped by a firm understanding of history. I think that might also be true, at least to a certain degree, of lawyers and judges. That is, having an understanding of those lawyers and judges who preceded us can be as enlightening as having an understanding of the law itself, especially when stories from and about those lawyers and judges contain timeless lessons and unwavering principles. It can never hurt to listen to the stories of and advice from rock-solid lawyers and judges. Judge Strom and Judge Riley certainly fit the bill as attorneys and judges from whom we may benefit by taking to heart their life examples. By providing us examples of their civility, professionalism, service and excellence, Judge Strom and Judge Riley have revealed what many of us already know—that they are credits to our profession. 

Endnotes

- ¹ On January 28, 1971, President Richard Nixon nominated Robert V. Denney to serve on the United States District Court for the District of Nebraska. The Senate confirmed the nomination on March 4, 1971. Judge Denney assumed senior status on April 16, 1981. He died on June 26, 1981.
- ² Hal Daub served in the United States House of Representatives as a Congressman from Nebraska from 1981 to 1989. From 1995 to 2001, Daub served as mayor of Omaha. He currently practices law in the Omaha law firm of Blackwell Sanders Peper Martin LLP.
- ³ On October 14, 1981, President Ronald Reagan nominated C. Arlen Beam to serve on the United States District Court for the District of Nebraska. The Senate confirmed Judge Beam on November 18, 1981. Judge Beam served as the chief judge of the district from 1986 to 1987. On July 1, 1987, President Reagan nominated Judge Beam to serve on the United States Court of Appeals for the Eighth Circuit. Judge Beam was confirmed by the Senate on November 6, 1987. On February 1, 2001, Judge Beam assumed senior status.
- ⁴ On April 12, 1973, President Richard Nixon nominated Albert G. Schatz to serve on the United States District Court for the District of Nebraska. Judge Schatz was confirmed by the Senate on May 10, 1973. Judge Schatz was still on the court when he died on April 30, 1985.
- ⁵ On November 30, 1970, President Richard Nixon nominated Donald R. Ross to serve on the United States Court of Appeals for the Eighth Circuit in a seat vacated by Judge Harry Blackmun's ascension to the Supreme Court. Judge Ross was confirmed by the Senate on December 11, 1970. On June 13, 1987, Judge Ross assumed senior status.
- ⁶ On April 7, 1992, President George H.W. Bush nominated Richard G. Kopf to serve on the United States District Court for the District of Nebraska. Judge Kopf was confirmed by the Senate on May 21, 1992. Judge Kopf served as chief judge of the district from 1999 to 2004.
- ⁷ On December 27, 2000, President William Clinton awarded Roger L. Gregory a recess appointment to the United States Court of Appeals for the Fourth Circuit. Judge Gregory was re-nominated on May 9, 2001, by President George W. Bush, and the Senate confirmed him on July 20, 2001.
- ⁸ On September 27, 1985, President Ronald Reagan nominated Richard H. Battey to serve on the United States District Court for the District of South Dakota. Judge Battey was confirmed by the Senate on October 25, 1985. Judge Battey assumed senior status on January 1, 1999.
- ⁹ *Roe v. Wade*, 410 U.S. 113 (1973).
- ¹⁰ On June 21, 1956, President Dwight Eisenhower nominated Richard E. Robinson to serve on the United States District Court for the District of Nebraska. Judge Robinson was confirmed by the Senate on July 2, 1956. Judge Robinson served as chief judge of the district from 1957 to 1972. Judge Robinson assumed senior status on January 7, 1972. He died on January 28, 1991.
- ¹¹ On September 6, 2005, President George W. Bush nominated John G. Roberts Jr. to a seat on the Supreme Court vacated by Chief Justice William H. Rehnquist. Before President Bush nominated Roberts to fill Chief Justice Rehnquist's seat, President Bush had nominated Roberts to the seat vacated by Justice Sandra Day O'Connor. While Roberts's nomination to succeed Justice O'Connor was pending, Chief Justice Rehnquist died. President Bush then nominated Roberts to the position of Chief Justice of the United States. The Senate confirmed Roberts as chief justice on September 29, 2005. Before Roberts was elevated to the Supreme Court, he was a circuit judge on the United States Court of Appeals for the District of Columbia Circuit, to which he was nominated by President George W. Bush on January 7, 2003, and was confirmed by the Senate on May 8, 2003.
- ¹² On October 22, 1971, President Richard Nixon nominated William H. Rehnquist to a seat on the Supreme Court of the United States. The Senate confirmed Rehnquist on December 10, 1971. On June 20, 1986, President Ronald Reagan nominated Justice Rehnquist to the position of Chief Justice of the United States. The Senate confirmed the nomination on September 17, 1986. On September 3, 2005, Chief Justice Rehnquist's service on the Supreme Court terminated due to his death.
- ¹³ On August 19, 1981, President Ronald Reagan nominated Sandra Day O'Connor to serve on the Supreme Court of the United States. The Senate confirmed the nomination on September 21, 1981. On January 31, 2006, Justice O'Connor assumed senior status. Also on January 31, 2006, the Senate confirmed Judge Samuel A. Alito Jr. of the Third Circuit Court of Appeals to replace Justice O'Connor, and Justice Alito took his place on the Supreme Court later that day.
- ¹⁴ On November 10, 2005, President George W. Bush nominated Samuel A. Alito Jr. to the Supreme Court of the United States to replace Justice Sandra Day O'Connor. The Senate confirmed Alito's nomination on January 31, 2006. Previously, President George H.W. Bush nominated Alito to the United States Court of Appeals for the Third Circuit on February 20, 1990, and the Senate confirmed him on April 27, 1990.
- ¹⁵ On August 14, 1978, President Jimmy Carter nominated Richard Sheppard Arnold to serve on the United States District Court for the Eastern and Western District of Arkansas. On September 20, 1978, the Senate confirmed the nomination. On December 19, 1979, President Carter nominated Judge Arnold to serve on the United States Court of Appeals for the Eighth Circuit. Judge Arnold was confirmed by the Senate on February 20, 1980. From 1992 to 1998, Judge Arnold served as chief judge of the circuit. Judge Arnold assumed senior status on April 1, 2001, and he died on September 23, 2004.
- ¹⁶ On August 18, 1959, President Dwight Eisenhower nominated Harry A. Blackmun to serve on the United States Court of Appeals for the Eighth Circuit (*to a seat vacated by Judge John B. Sanborn, for whom Judge Blackmun had clerked*). The Senate confirmed the nomination on September 14, 1959. On April 15, 1970, President Richard Nixon nominated Judge Blackmun to serve on the Supreme Court of the United States. Judge Blackmun was confirmed by the Senate on May 12, 1970. Justice Blackmun assumed senior status on August 3, 1994, and he died on March 4, 1999.
- ¹⁷ On November 13, 1980, President Jimmy Carter nominated Stephen G. Breyer to serve on the United States Court of Appeals for the First Circuit. The Senate confirmed the nomination on December 9, 1980. On May 17, 1994, President William Clinton nominated Judge Breyer to serve on the Supreme Court (*to the seat vacated by Justice Blackmun*). The Senate confirmed the nomination on July 29, 1994.
- ¹⁸ On January 12, 1956, President Dwight Eisenhower nominated Warren E. Burger, who was born in St. Paul, MN, to serve on the United States Court of Appeals for the D.C. Circuit. The Senate confirmed the nomination on March 28, 1956. On May 23, 1969, President Richard Nixon nominated Judge Burger to serve as Chief Justice of the United



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States. The Senate confirmed the nomination on June 9, 1969. Chief Justice Burger assumed senior status on September 26, 1986, and he died on June 25, 1995.

¹⁹ On May 24, 1983, President Ronald Reagan nominated Pasco M. Bowman II to serve on the United States Court of Appeals for the Eighth Circuit. On July 18, 1983, the Senate confirmed the nomination. Judge Bowman served as chief judge of the circuit from 1998 to 1999. Judge Bowman assumed senior status on August 1, 2003.

²⁰ On March 3, 1975, President Gerald Ford nominated Anthony M. Kennedy to serve on the United States Court of Appeals for the Ninth Circuit. The Senate confirmed the nomination on March 20, 1975. On November 30, 1987, President Ronald Reagan nominated Judge Kennedy to serve on the Supreme Court of the United States. The Senate confirmed the nomination on February 3, 1988.

²¹ On October 30, 1989, President George H.W. Bush nominated Clarence Thomas to serve on the United States Court of Appeals for the D.C. Circuit (*in a seat vacated by Judge Robert H. Bork*). The Senate confirmed the nomination on March 6, 1990. On July 8, 1991, President Bush nominated Judge Thomas to serve on the Supreme Court of the United States (*to a seat vacated by Justice Thurgood Marshall*). The Senate confirmed the nomination on October 15, 1991. For more information on the life story of Justice Thomas, please read Tory L. Lucas, *From Pinpoint to the Legal Pinnacle: A Book Review of Judging Thomas, The Nebraska Lawyer* at 13-18 (Feb. 2005).

²² On July 11, 1966, President Lyndon Johnson nominated Donald P. Lay to serve on the United States Court of Appeals for the Eighth Circuit. Judge Lay was confirmed by the Senate on July 22, 1966. Judge Lay served as chief judge of the circuit from 1979 to 1992. On January 7, 1992, Judge Lay assumed senior status.

²³ On October 22, 1971, President Richard Nixon nominated Lewis F. Powell Jr. to serve on the Supreme Court of the United States. The Senate confirmed the nomination on December 6, 1971. Justice Powell assumed senior status on June 26, 1987, and he died on August 25, 1998. Before ascending to the Supreme Court, Lewis Powell engaged in the private practice of law for nearly four decades.

²⁴ On January 20, 1801, President John Adams nominated John Marshall to serve as Chief Justice of the United States. The Senate confirmed the nomination on January 27, 1801. Chief Justice Marshall's service terminated on July 6, 1835, due to his death.

²⁵ On January 24, 1990, President George H.W. Bush nominated David H. Souter to serve on the United States Court of Appeals for the First Circuit. The Senate confirmed the nomination on April 27, 1990. Before Judge Souter even published an opinion, President Bush nominated him on July 25, 1990, to serve on the Supreme Court. On October 2, 1990, the Senate confirmed the nomination.

²⁶ On May 11, 1954, President Dwight Eisenhower nominated Charles Evans Whittaker to serve on the United States District Court for the Western District of Missouri. The Senate confirmed the nomination on July 7, 1954. On March 16, 1956, President Eisenhower nominated Judge Whittaker to serve on the United States Court of Appeals for the Eighth Circuit. The Senate confirmed the nomination on June 4, 1956. On March 2, 1957, President Eisenhower nominated Judge Whittaker to serve on the Supreme Court of the United States. The Senate confirmed the nomination on March 19, 1957. Justice Whittaker assumed senior status on March 31, 1962, resigned on September 30, 1965, and died in Kansas City, MO, on November 26, 1973.

²⁷ On July 15, 1982, President Ronald Reagan nominated Antonin Scalia to serve on the United States Court of Appeals for the D.C. Circuit. The Senate confirmed the nomination on August 5, 1982. On June 24, 1986, President Reagan nominated Judge Scalia to serve on the Supreme Court of the United States. The Senate confirmed the nomination on September 17, 1986. Justice Scalia had been a Sheldon Fellow at Harvard University, a professor at the University of Virginia, a visiting professor at Georgetown University, a professor at the University of Chicago, and a visiting professor at Stanford University.

²⁸ On April 14, 1980, President Jimmy Carter nominated Ruth Bader Ginsburg to serve on the United States Court of Appeals for the D.C. Circuit. The Senate confirmed the nomination on June 18, 1980. On June 22, 1993, President William Clinton nominated Judge Ginsburg to serve on the Supreme Court of the United States. Judge Ginsburg was confirmed by the Senate on August 3, 1993.

Before becoming a justice, Ginsburg worked at the Columbia Law School Project on International Procedure, was a professor at Rutgers Law School and Columbia Law School, and was a fellow at the Center for Advanced Study in Behavioral Sciences.

²⁹ Justice Breyer had been a professor at Harvard Law School and at the Kennedy School of Government at Harvard University, and was a visiting professor at the College of Law, Sydney, Australia, and at the University of Rome.

³⁰ On September 22, 1970, President Richard Nixon nominated John Paul Stevens to serve on the United States Court of Appeals for the Seventh Circuit. The Senate confirmed the nomination on October 8, 1970. On November 28, 1975, President Gerald Ford nominated Judge Stevens to serve on the Supreme Court of the United States. The Senate confirmed the nomination on December 17, 1975. Justice Stevens had been a lecturer at Northwestern University School of Law and at the University of Chicago School of Law.

³¹ While engaged in the private practice of law and during his Ninth Circuit judgeship, Kennedy had been a professor of constitutional law at the McGeorge School of Law.

³² Professor Fenner is the James L. Koley '54 Professor of Constitutional Law at Creighton University School of Law. In this very magazine, Professor Fenner has been touted as enjoying "near-rock star status in the Omaha legal community." See Tory L. Lucas, *From Pinpoint to the Legal Pinnacle: A Book Review of Judging Thomas, The Nebraska Lawyer* at 16 (Feb. 2005).

³³ Before President Reagan nominated Judge Bowman to the Eighth Circuit, Bowman had been a professor at the University of Georgia School of Law, a professor and dean at Wake Forest University School of Law, a visiting professor at the University of Virginia School of Law, and a professor and dean at the University of Missouri-Kansas City School of Law.

³⁴ On October 23, 1985, President Ronald Reagan nominated Morris Sheppard Arnold to serve on the United States District Court for the Western District of Arkansas. The Senate confirmed the nomination on December 16, 1985. On November 6, 1991, President George H.W. Bush nominated Judge Arnold to serve on the United States Court of Appeals for the Eighth Circuit in a seat vacated by Judge Riley's former boss, Judge Donald P. Lay. The Senate confirmed the nomination on May 21, 1992. Judge Arnold recently announced he will assume senior status in October 2006. Holding LL.M. and S.J.D. degrees from Harvard Law School, Judge Arnold had been a teaching fellow in law at Harvard University, a professor and dean at Indiana University School of Law, a professor and vice-president of the University of Pennsylvania Law School, a professor at the University of Arkansas School of Law, and a visiting professor at Stanford University School of Law.

³⁵ On March 11, 1970, President Richard Nixon nominated Warren K. Urbom to serve on the United States District Court for the District of Nebraska. Judge Urbom was confirmed by the Senate on April 23, 1970. Judge Urbom served as chief judge of the district from 1972 to 1986. On December 31, 1990, Judge Urbom assumed senior status.

³⁶ On May 22, 1957, President Dwight Eisenhower nominated Robert Van Pelt to serve on the United States District Court for the District of Nebraska. The Senate confirmed the nomination on June 11, 1957. Judge Van Pelt assumed senior status on May 5, 1970, and he died on April 27, 1988.

³⁷ On January 19, 1942, President Franklin Roosevelt nominated John Wayne Delehant to serve on the United States District Court for the District of Nebraska. The Senate confirmed the nomination on February 9, 1942. Judge Delehant served as chief judge of the district from 1956 to 1957. Judge Delehant assumed senior status on April 30, 1957. He died on April 20, 1972.

³⁸ On April 22, 1999, President William Clinton nominated Kermit E. Bye to serve on the United States Court of Appeals for the Eighth Circuit. The Senate confirmed the nomination on February 24, 2000.

³⁹ On June 25, 1985, President Ronald Reagan nominated Roger L. Wollman to serve on the United States Court of Appeals for the Eighth Circuit. The Senate confirmed the nomination on July 19, 1985. Judge Wollman served as chief judge of the circuit from 1999 to 2002.

⁴⁰ On November 30, 1979, President Jimmy Carter nominated Diana E. Murphy to serve on the United States District Court for the District of

Minnesota. The Senate confirmed the nomination on February 20, 1980. On July 28, 1994, President William Clinton nominated Judge Murphy to serve on the United States Court of Appeals for the Eighth Circuit. The Senate confirmed the nomination on October 7, 1994.

⁴¹ On September 10, 1990, President George H.W. Bush nominated James B. Loken to serve on the United States Court of Appeals for the Eighth Circuit. The Senate confirmed the nomination on October 12, 1990. Judge Loken currently serves as the chief judge of the circuit.

⁴² On February 3, 1986, President Ronald Reagan nominated David R. Hansen to serve on the United States District Court for the Northern District of Iowa. The Senate confirmed the nomination on March 3, 1986. On July 30, 1991, President George H.W. Bush nominated Judge Hansen to serve on the United States Court of Appeals for the Eighth Circuit. The Senate confirmed the nomination on November 15, 1991. Judge Hansen served as chief judge of the circuit from 2002 to 2003. He assumed senior status on April 1, 2003.

⁴³ On January 7, 1997, President William Clinton nominated Joseph F. Bataillon to serve on the United States District Court for the District of Nebraska in a seat vacated by Judge Strom. The Senate confirmed the nomination on September 11, 1997. Judge Bataillon currently serves as the chief judge of the district.

⁴⁴ On September 4, 2001, President George W. Bush nominated Laurie Smith Camp to serve on the United States District Court for the District of Nebraska. The Senate confirmed the nomination on October 23, 2001.

⁴⁵ On August 6, 1993, President William Clinton nominated Thomas M. Shanahan to serve on the United States District Court for the District of Nebraska. The Senate confirmed the nomination on November 20, 1993. Judge Shanahan assumed senior status on May 5, 2004.

⁴⁶ F.A. Gossett III has served as a United States Magistrate Judge for the District of Nebraska since 2003.

⁴⁷ Thomas D. Thalken has served as a United States Magistrate Judge for the District of Nebraska since 1993.

⁴⁸ Timothy J. Mahoney has served as a United States Bankruptcy Judge for the District of Nebraska since 1985.

⁴⁹ *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720 (8th Cir. 2002).

⁵⁰ In addition to Judges Riley and Lay, Judge Bowman sat on the panel hearing the *Orr* appeal.

⁵¹ See *Orr*, 297 F.3d at 726 (Lay, J., dissenting) (“*In all due respect, this is a myopic treatment of the record before the district court.*”).

⁵² *United States v. Fellers*, 285 F.3d 721 (8th Cir. 2002) (affirming conviction), rev’d, 540 U.S. 519 (2004), remanded to, 397 F.3d 1090 (8th Cir.) (affirming conviction), cert. denied, 126 S. Ct. 415 (2005).

⁵³ On August 3, 1978, President Jimmy Carter nominated Theodore McMillian to serve on the United States Court of Appeals for the Eighth Circuit. The Senate confirmed the nomination on September 22, 1978. Judge McMillian assumed senior status on July 1, 2003. He died on January 18, 2006. On April 17, 2006, the Eighth Circuit held a special memorial session to honor Judge McMillian. The program from that event is available at the following website: http://lib.ce8.circ8.dcn/what%27s%20new%20files/mcmillian_mem_hand-out.pdf. A permanent display honoring Judge McMillian is now housed on the 27th floor of the Thomas F. Eagleton Courthouse in St. Louis.

⁵⁴ John Martin is the Eighth Circuit Settlement Director.

⁵⁵ On December 2, 1971, President Nixon nominated Richard A. Dier to serve on the United States District Court for the District of Nebraska. The Senate confirmed the nomination on December 6, 1971. Judge Dier’s service terminated on December 7, 1972, due to his death.

⁵⁶ “Under the Missouri Plan, judges are appointed by a high elected official, generally from a list of nominees put together by a nonpartisan nominating commission, and then subsequently stand for unopposed retention elections in which voters are asked whether the judges should be recalled. If a judge is recalled, the vacancy is filled through a new nomination and appointment. This system obviously reduces threats to judicial impartiality, even if it does not eliminate all popular pressure on judges. The Missouri Plan is currently used to fill at least some judicial offices in 15 States.” Republican Party of *Minn. v. White*, 536 U.S. 765, 791-792 (2002) (O’Connor, J., concurring) (citations omitted).

⁵⁷ 28 U.S.C. ‘ 2254 (habeas corpus for state prisoners); 28 U.S.C. ‘ 2255 (habeas corpus for federal prisoners).

⁵⁸ 42 U.S.C. ‘ 1983 (civil actions for civil rights violations).

⁵⁹ Criminal Justice Act, 18 U.S.C. ‘ 3006A.



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