KEEPING IT CLEAN: RICHARD H. BRYAN AND NEVADA GAMING

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I. Introduction

When Nevada legalized gaming in 1931, few observers could have predicted the extent to which the gaming industry would grow and evolve. The modern gaming industry has expanded across the globe, and is now regarded as a dynamic avenue of commerce. However, during the industry's infancy, many Americans denounced gaming as a pariah. Legalized gaming was not viewed as a legitimate industry; rather, it was a haven for swindlers and cheaters. How did Nevada turn this negative perception into a positive one? Legislators and regulators resolved to create and enforce gaming regulations with the highest standards of ethics and integrity, and in doing so, they established the model jurisdiction for the gaming industry.

One Nevadan epitomized this integrity during his thirty years of public service: Richard H. Bryan. This article explores Bryan's exemplary political career, which included terms as a Nevada state assemblyman, senator, attorney general, governor, and United States senator. Throughout his career, Bryan was a stalwart champion of the Nevada gaming industry against opposition within the state and in the federal government. By helping the gaming industry conquer obstacles and avoid the pitfalls of impropriety, Bryan was *keeping it clean*. Thus, this article will demonstrate that Bryan set the gold standard of integrity for the Nevada gaming control system.

II. SENATOR BRYAN'S BACKGROUND AND EDUCATION

Throughout his formative years, Richard Bryan exhibited many signs fore-telling his considerable achievements during his political career. Bryan credits his father with instilling him with the desire to enter public service. Oscar W. Bryan was a prominent Las Vegas attorney who once served as a justice of the

89

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¹ Interview with Senator Richard H. Bryan, in Las Vegas, Nev. (Apr. 17, 2009) (on file with author) [hereinafter Bryan Interview].

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90

peace.² In addition to his service on the bench, Oscar was active in the Democratic Party and ran for state assembly and district attorney.³ Bryan emulated his father's interest in government by serving as senior class president at Las Vegas High School and student body president at the University of Nevada-Reno.⁴ After receiving his bachelor's degree in 1959, Bryan entered the United States Army as a second lieutenant and became a captain in the Army Reserve.⁵ As soon as he completed Army service, Bryan went on to attend the University of California, Hastings College of Law.⁶ In 1963, Bryan graduated with honors after he served on the Hastings Law Review and received the Order of the Coif.⁷

Bryan returned to Las Vegas to begin practicing law and launch his political career. He was admitted to the Nevada bar and began to serve as Clark County deputy district attorney.⁸ At age twenty-eight, Bryan was appointed as the first public defender in Nevada—the youngest attorney in the U.S. to hold that title in 1966. Bryan won his first elected position on the state assembly in 1968 and his peers named him "outstanding freshman assemblyman." In 1972, after two terms as an assemblyman, he moved on to the state senate where he chaired the taxation and education committees. Continuing his ascension in the political ranks, Nevadans elected Bryan as attorney general, a position he held from 1978 to 1982. This post eventually catapulted Bryan into the governorship after he successfully challenged incumbent Republican Governor Robert List.9

PIVOTAL CHANGES IN NEVADA GAMING LAW

Bryan contributed to some of the most important changes to gaming regulation in Nevada history. The Corporate Gaming Act and the Foreign Gaming Act offer two strong examples of Bryan's legislative achievements for the gaming industry. These Acts facilitated corporate investment in gaming to provide increased growth and innovation for Nevada casinos and required applicants and licensees to uphold the integrity of the Nevada gaming system in all their gaming operations. Because of his lawmaking experience, Bryan adeptly shaped gaming policies throughout his career, which resulted in growth, prosperity, and increased legitimacy for the Nevada gaming industry.

² A LIBERAL CONSCIENCE: THE ORAL HISTORY OF RALPH DENTON, NEVADAN 174 (Michael S. Green & R.T. King eds., 2001).

³ Bryan Interview, *supra* note 1.

⁴ Marie Marmo Mullaney, Biographical Directory of Governors of the United STATES 1988-1994, at 241 (1994).

⁵ *Id*.

⁶ *Id*.

⁷ Id. See also Richard Bryan, Attorneys, Lionel Sawyer & Collins, http://www.lionel sawyer.com/index.cfm?page_id=5&page=attorney_profile&atid=64 (last visited Nov. 7, 2010).

⁸ Mullaney, *supra* note 4.

⁹ *Id*.

10:14

Spring 2011] RICHARD H. BRYAN AND NEVADA GAMING

A. The Corporate Gaming Act

In Bryan's 1969 freshman term as a state assemblyman, the Nevada legislature passed the Corporate Gaming Act. ¹⁰ Prior to the passage of this legislation, publicly traded corporations were essentially unable to own casinos in Nevada due to the strict licensing process, which required that each shareholder apply for a gaming license, regardless of how small his or her share in the corporation. ¹¹ Legislators knew that a painstaking individual investigation of thousands of corporate shareholders was not a viable option, particularly because shareholders continuously bought and sold company stock. ¹² To overcome this hurdle, the innovative new law allowed public corporations to invest in Nevada gaming by requiring a gaming license for the officers and directors who operated the casino and the shareholders who wished to own a controlling interest of ten percent or more. ¹³ Shareholders who owned less than ten percent would no longer need to apply for licensing.

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Without the Corporate Gaming Act, the exponential growth of the Las Vegas Strip would not have been possible. In the 1970s and 1980s, the independent casino owner became an endangered species while an increasing number of public companies used federally regulated stock and debt offerings to raise the requisite capital to buy, expand, refurbish, or build casinos. Hilton, MGM, Holiday Inn, Ramada, Hyatt, and others decided to invest in Nevada gaming. Bryan reflected, "[c]orporate gaming made it possible for casinos to amass the capital necessary to build," thus opening doors to new financing avenues and solving the capital problem for Nevada gaming. As an unintended consequence, corporate gaming bolstered public perception that corporations drove out the final vestiges of mob control. Truth be told, legislators wanted corporate casino ownership to legitimize Nevada casinos as a sound addition to any stock portfolio, and it did. The Corporate Gaming Act marked the first in a long list of pivotal changes to Nevada's gaming regulatory framework in which Bryan would be involved.

 11 David G. Schwartz, Suburban Xanadu: The Casino Resort On The Las Vegas Strip And Beyond 159 (2003) [hereinafter Suburban Xanadu].

¹⁰ Bryan Interview, *supra* note 1.

¹² Id. See also Lionel Sawyer & Collins, Nevada Gaming Law 25 (3d ed. 2000).

¹³ Suburban Xanadu, *supra* note 11, at 160.

 $^{^{14}}$ Jeff Burbank, License to Steal: Nevada's Gaming Control System in the Megaresort Age 32 (2000) [hereinafter License to Steal] .

¹⁵ LIONEL SAWYER & COLLINS, *supra* note 12.

¹⁶ Bryan Interview, *supra* note 1.

¹⁷ Suburban Xanadu, *supra* note 11, at 163.

¹⁸ *Id.* Corporate casino ownership contributed to the elimination of organized crime influence in Nevada gaming. However, it was the concerted efforts of Nevada's legislators, gaming regulators, and law enforcement officials that eventually eradicated organized crime from the gaming industry. *See generally* Leslie Niño Fidance, *The Mob* Never *Ran Vegas*, 13 Gaming L. R. & Econ. 27 (2009).

¹⁹ Suburban Xanadu, *supra* note 11, at 163.

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The Foreign Gaming Act

As a state senator and member of the Nevada senate judiciary committee, Bryan actively participated in the passage of the 1977 Foreign Gaming Act.²⁰ After New Jersey legalized casino gaming in Atlantic City, Nevada legislators understood that the "Silver State" was no longer the only jurisdiction with legalized gaming. Legislators wanted a tool to prevent licensees from doing something illegal in another jurisdiction that could eventually damage the Nevada gaming industry.²¹ They protected the integrity of Nevada gaming by passing the Foreign Gaming Act, which expressly prohibited a licensee from engaging in unscrupulous conduct outside Nevada. Specifically, the legislation obligated Nevada licensees running a gaming establishment anywhere else in the world to operate that establishment within the laws of the relevant gaming iurisdiction.²²

Instead of simply requiring licensees to follow the law, the Foreign Gaming Act²³ went a step further by requiring licensees to operate foreign gaming operations in accordance with Nevada's standards of honesty and integrity.²⁴ Under this Act, it is not enough for licensees to follow the laws of a jurisdiction outside of Nevada; they cannot engage in any conduct or association that "[p]oses an unreasonable threat to the control of gaming in [Nevada]; . . . tends to reflect discredit or disrepute upon [Nevada] . . . ; or is contrary to the public policy of [Nevada] concerning gaming."25 Bryan energetically supported Nevada's right to hold licensees to the highest standards of ethics because he understood that public perception of the Nevada gaming industry as honest and reliable was crucial to consistent growth.²⁶ This rationale would shape Bryan's policy agenda for the gaming industry throughout his career. Therefore, keeping the gaming industry clean was not an afterthought; it was a driving force.

A licensee shall not, in a foreign gaming operation, knowingly:

- (1) Violate a foreign, federal, tribal, state, county, city or township law, regulation, ordinance or rule, or any equivalent thereof, concerning the conduct of gaming;
- (2) Fail to conduct the operation in accordance with the standards of honesty and integrity required for gaming in [Nevada];
- (3) Engage in an activity or enter into an association that is unsuitable for a licensee
 - (a) Poses an unreasonable threat to the control of gaming in this state;
 - (b) Reflects or tends to reflect discredit or disrepute upon this state or gaming in this state: or
 - (c) Is contrary to the public policy of this state concerning gaming;

NEV. REV. STAT. § 463.720(1)-(3) (1997).

²⁰ Foreign Gaming Act: Hearing on Assemb. 375 Before the S. and Assemb. Judiciary Comm., 1977 Leg., 59th Sess. (Nev. 1977).

²¹ Id. See also Jason M. Yates, The Pansy Ho and MGM Mirage Partnership: What is the Role of State Regulators in a Global Gaming Economy? (2008) (unpublished paper), http:// works.bepress.com/jason_yates/1 (last visited Nov. 8, 2010).

²² Nev. Rev. Stat. § 463.720 (1997). See also Lionel Sawyer & Collins, supra note 12, at 226.

²³ Codified in Nev. Rev. Stat. §§ 463.680 – 463.720 (1997).

²⁴ In relevant part, the key provision of the foreign gaming statute states:

²⁵ Nev. Rev. Stat. § 463.720(3) (1997).

²⁶ Bryan Interview, *supra* note 1.

Spring 2011] RICHARD H. BRYAN AND NEVADA GAMING

IV. KEY JUDICIAL RULINGS SUPPORTING NEVADA'S GAMING REGULATIONS

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During his tenure as Nevada's Attorney General, Bryan was instrumental in developing a body of case law that supported Nevada's authority to regulate the gaming industry without impediment. Bryan supervised numerous highprofile gaming cases in both the state and federal courts. As deputy and chief deputy of the attorney general's gaming division, which represents the State Gaming Control Board ("Board") and Gaming Commission ("Commission"), Patricia Becker worked closely with Bryan on gaming cases. Becker remembers that Bryan was closely involved in each case, but rather than taking over a case for court appearances, he trusted the gaming division attorneys to argue their own cases. This practice instilled confidence in his deputy attorneys and allowed them to remain calm amidst intense media coverage. Bryan also led by example when he personally argued gaming cases. His leadership as Nevada's Attorney General set vital precedents in gaming law.

A. Gaming is a Privilege, Not a Right

Effective gaming regulation stands on the principle that gaming is a privilege, not a right.³⁰ Attorney General Bryan and his deputies successfully defended this principle against suspected mob affiliates in a number of cases, thus helping gaming regulators win the war against organized crime and forcing casino operators with organized crime affiliations out of Nevada gaming. In Rosenthal v. State ex rel. Nevada Gaming Commission, the Nevada Supreme Court affirmed its previous ruling that gaming authorities could revoke organized crime front man, Frank Rosenthal's work permit if gaming regulators deemed such action necessary.³¹ In Spilotro v. State ex rel. Nevada Gaming Commission, 32 the court upheld the constitutionality of Nevada's List of Excluded Persons,³³ or the "Black Book,"³⁴ against notorious mob affiliate, Tony Spilotro. State v. Glusman affirmed the Commission's authority to require a person doing business on the premises of a gaming establishment to apply for licensure and a determination of suitability.³⁵ Each of these cases represents a key building block in establishing the Commission's authority to enforce gaming regulations effectively. With firmly established precedent that gaming is a privilege and not a right, gaming regulators led successful efforts to rid Nevada of organized crime influence.

²⁹ *Id*.

²⁷ Telephone Interview with Patricia Becker, Exec. Dir., UNLV Int'l Gaming Inst., former Member, Nev. Gaming Control Bd., (May 20, 2009) [hereinafter Becker Interview].

²⁸ *Id*.

³⁰ State v. Rosenthal, 559 P.2d 830, 835 (Nev. 1977).

^{31 620} P.2d 874, 876 (Nev. 1980).

^{32 661} P.2d 467, 472 (Nev. 1983).

³³ See Nev. Rev. Stat. § 463.151 (1985).

³⁴ Sergio Lalli, *A Peculiar Institution in* The Players: The Men Who Made Las Vegas 1, 10 (Jack Sheehan ed., 1997). For many years, the List of Excluded Persons has been referred to as the "Black Book" for the binder that originally held it. Persons included on the list must be excluded or ejected from all licensed gaming establishments in Nevada. *See* Niño Fidance, *supra* note 18, at 29-30 (citations omitted).

³⁵ 651 P.2d 639, 642, 649 (Nev. 1982).

unknown

94

B. The Aladdin Hotel case

As attorney general, Bryan personally represented the Board and Commission before the Ninth Circuit Court of Appeals.³⁶ In 1979, James Tamer, a former Aladdin executive, was convicted of conspiring to exercise illegal hidden ownership in the resort.³⁷ Following the conviction, the Board initiated efforts to revoke the Aladdin's gaming license but subsequently agreed to allow the sale of the resort to a purchaser suitable for licensure.³⁸ In the meantime, the Board permitted gaming operations to continue. The Aladdin's potential buyer pulled out of the agreement,³⁹ and after two and a half hours of heated debate, the Commission again voted in favor of revoking the Aladdin's gaming license.⁴⁰ The Aladdin received a temporary restraining order and preliminary injunction from a federal district court to keep its doors open,⁴¹ thus setting the stage for Attorney General Bryan to advocate for Nevada gaming regulators' right to revoke the Aladdin's gaming license.

The Ninth Circuit agreed with Attorney General Bryan and upheld the Commission's power to revoke the Aladdin's license without federal judicial review. The court rejected the Aladdin's assertion of an alleged right to a reasonable time to dispose of assets prior to license revocation, which the casino equated to a federal due process right invoking federal jurisdiction. Likewise, the Ninth Circuit declined to extend federal jurisdiction to questions concerning the operation or interpretation of gaming licenses, which were "purely matters of state law." Because the federal district court lacked jurisdiction, the Ninth Circuit reversed the preliminary injunction order and remanded the case with instructions to dismiss the Aladdin's complaint.

Since the inception of legalized gaming in Nevada, state law has always governed gaming regulation. On those grounds, Nevada zealously guarded its right to regulate the industry with minimal federal interference. Bryan's advocacy on behalf of the Gaming Commission as Attorney General helped guarantee that a licensee could not thwart regulators efforts to police Nevada's most important industry.

V. Bryan's Actions as Nevada's Governor

The global economy experienced a devastating recession between 1978 and 1982. Unfortunately, the Nevada gaming industry was not spared from the recession's destructive effects. Rising fuel costs and gas shortages caused severe visitor volume declines in both the drive-in market and the air market

³⁶ Aladdin Hotel Corp. v. Nev. Gaming Comm'n, 637 F.2d 582, 583 (9th Cir. 1980).

 $^{^{37}}$ Ronald A. Farrell & Carole Case, The Black Book and the Mob: The Untold Story of the Control of Nevada's Casinos 120 (1995).

³⁸ Aladdin Hotel Corp., 637 F.2d at 583.

³⁹ *Id*.

 $^{^{40}}$ Lionel Sawyer & Collins, supra note 12, at 345.

⁴¹ Aladdin Hotel Corp., 637 F.2d at 583.

⁴² Id. at 584 (citations omitted).

⁴³ *Id*.

⁴⁴ *Id*.

⁴⁵ *Id*. at 585.

for the Las Vegas Strip.⁴⁶ The recession also caused international "high rollers" to stay home and increased the amounts of uncollectable gaming debts.⁴⁷ This sharp economic downturn shattered a prevailing myth that the gaming industry was "recession proof."⁴⁸ For the first time in thirty years, Nevada gaming revenue fell.⁴⁹

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When Bryan took the oath of office as Nevada's twenty-fifth governor in 1983, the Nevada gaming industry faced unique and difficult challenges. Two major issues urgently needed the new governor's attention: the decline in tourism resulting from the economic downturn and the increasing competition from Atlantic City gaming. Bryan dealt with these problems head-on using adept leadership and skillful regulatory appointments to forge a new path. In doing so, Bryan helped lay the groundwork for the "Burger King Revolution"—the shrewd marketing makeover that changed Las Vegas' target market and catapulted the Nevada gaming industry out of recession⁵¹ and into the twenty-first century.

A. "Gaming - and So Much More! Richard Bryan's Tourism Agenda for the 80's"

During Bryan's gubernatorial campaign, he prepared an ambitious tourism agenda to stimulate radical change in Nevada's dismal efforts to promote tourism. He wrote a pamphlet entitled "Gaming - and So Much More! Richard Bryan's Tourism Agenda for the 80's" to highlight the growing need for "aggressive and sophisticated marketing campaigns." The facts were astonishing: 42% of the Nevada workforce depended on travel and tourism revenue as service industry employees, yet Nevada was last in tourism expenditures. For example, the annual advertising budgets of other tourist states dwarfed Nevada's paltry \$40,000 budget—Utah spent \$1 million annually; North Dakota, \$1.3 million; Mississippi, \$1.6 million; and New Mexico, \$4.6 million. He are partner in encouraging tourism." The figures demonstrated that state government relied almost entirely on the gaming industry to shoulder the advertising burden.

⁴⁶ David G. Schwartz, *The Burger King Revolution: How Las Vegas Bounced Back, 1983-1989*, 14 Gaming L. Rev. & Econ. 261, 265 (2010) (citing *Las Vegas Visitors and Convention Authority, Historical Las Vegas Visitor Statistics* LVCVA.com) [hereinafter *Burger King*].

⁴⁷ *Id.* at 266 (citations omitted).

⁴⁸ *Id.* at 265.

⁴⁹ William N. Thompson, *Steve Wynn: I Got the Message, in* The Maverick Spirit: Building the New Nevada 194, 198 (Richard O. Davies ed., 1999).

⁵⁰ Burger King, supra note 46, at 261.

⁵¹ *Id*.

⁵² Richard H. Bryan, Gaming - and So Much More! Richard Bryan's Tourism Agenda for the 80's 1 (Aug. 17, 1982) (available in the UNLV Center for Gaming Research).

⁵³ *Id*.

⁵⁴ *Id*.

⁵⁵ *Id.* at 12.

⁵⁶ *Id.* at 2.

96

UNLV GAMING LAW JOURNAL

unknown

Atlantic City: Threat to Nevada Gaming

Although many Nevada gaming leaders publicly denied any fear of losing their monopoly on legalized gaming,⁵⁷ Atlantic City was no small threat to Nevada gaming. In fact, many observers considered the seaside town to be the "city of the future." ⁵⁸ New Jersey voters legalized casino gaming in a 1976 referendum, which limited gaming within the state to Atlantic City.⁵⁹ Casinos opened in 1978, and within a few short years, the annual gaming revenue of Atlantic City casinos rivaled Nevada's; thus, Las Vegas was in actual danger of losing its designation as the world's top gaming destination.⁶⁰

The "Burger King Revolution"

To turn the economic tide in the mid-80s, the industry underwent a largescale realignment. Las Vegas broadened its appeal by adding family attractions and catering to a demographic described as "low roller" and "middle America."62 Implementing Governor Bryan's plan to revamp state and local tourism initiatives, 63 the Las Vegas Convention and Visitors Authority ("LVCVA") promoted Las Vegas as a family destination with television and newspaper advertisements.⁶⁴ The New York Times proclaimed, "Las Vegas has responded to the new realities of gaming by trying to transform itself from sin city into family entertainment zone."65 The results were promising; family activity doubled between 1984 and 1989.66 The LVCVA also promoted convention business as part of the \$10 million dollar worldwide marketing campaign.⁶⁷ In a stark turn of events, Atlantic City's growth slowed, while Las Vegas' growth began to build momentum.⁶⁸

Some industry observers describe this expansion as the "Burger King Revolution," a reference to the first fast-food restaurant built within a Las Vegas casino. For many years, the Riviera Hotel and Casino focused on pursuing the high roller market."69 However, this unproductive single-market strategy coupled with the overwhelming effects of the recession landed "the Riv" in bankruptcy. 70 Jeffrey Silver, former Board member and chief executive officer at the Riviera, recognized the struggling casino's need to broaden its appeal to middle-class guests.⁷¹ He proposed offering a familiar franchise restaurant

⁵⁹ Suburban Xanadu, *supra* note 11, at 178.

⁵⁷ Burger King, supra note 46, at 263.

⁵⁸ *Id*.

⁶⁰ Burger King, supra note 46, at 262-63 (citations omitted).

⁶¹ Id. at 269.

⁶² Nicholas D. Kristof, Vegas Courts Low Rollers, N.Y. Times, Nov. 28, 1985, at D1.

⁶³ Bryan, supra note 52, at 5.

⁶⁴ Robert Reinhold, Las Vegas Transformation: From Sin City to Family City, N.Y. TIMES, May 30, 1989, at B5.

⁶⁵ *Id.* at A1.

⁶⁶ Id. at B5.

⁶⁷ Al Martinez, The New Las Vegas: A Bet on Burgers, L.A. TIMES, Mar. 31, 1984, at 24. ⁶⁸ Burger King, supra note 46, at 272 (citing Atlantic City in a Stall as Las Vegas Expands, USA TODAY, Apr. 5, 1985, at 6B).

⁶⁹ Id. at 268.

⁷¹ Martinez, supra note 67, at 1.

among other family-friendly attractions such as a video arcade.⁷² Despite formidable opposition, a Burger King location eventually opened inside the casino in 1984.⁷³ Silver converted the skeptics when the Riviera's Burger King became the most successful franchise in the chain.⁷⁴ By targeting the "middleclass roller,"⁷⁵ the Riviera was able to emerge from bankruptcy triumphant.⁷⁶ Competing casinos could not ignore the Riv's newfound success and soon began revamping their marketing strategies, including exploring their own franchise prospects.⁷⁷

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In retrospect, the Burger King Revolution did much more than simply bring fast food into Las Vegas casinos. It signified a symbolic rebirth—Las Vegas' transformation from "high-roller town to middle-class mecca." 78 Nevada gaming operators did not sit on their laurels while economic distress and increased competition from Atlantic City threatened their survival. Instead, they embraced Governor Bryan's call for a public-private partnership to implement an aggressive tourism campaign⁷⁹ and overhauled their operations to accommodate change. For example, once casino executives recognized that slot players could generate more revenue than table players could, the number of quarter-machine slots more than doubled on the Strip from 1983 to 1989.80

As governor, Bryan provided the leadership necessary to implement new tourism strategies that promoted the Nevada gaming industry effectively. Although the emergence of corporate ownership in the '70s and the megaresort boom of the '90s tend to receive more media attention, the '80s was a pivotal decade because it was an era where Nevada gaming restructured the industry's focus.81 Throughout Bryan's tenure as governor, gaming revenues rose and double-digit revenue increases were common.⁸² In the 1988 fiscal year, gross gaming revenue topped \$4 billion dollars and generated over \$308 million in state taxes and license fees. 83 When Bryan left for Washington, D.C. in 1989, Nevada was poised to enter a new megaresort age with the opening of the Mirage, the dream project of casino mogul Steve Wynn.⁸⁴ The carefully planned Mirage offered increased non-gaming elements to tourists and reintroduced luxury to high-end clientele with huge success.⁸⁵ The prosperity of the

⁷⁵ Martinez, *supra* note 67, at 1.

⁷² Burger King, supra note 46, at 268 (citing Martinez, supra note 67, at 1).

⁷³ *Id*.

⁷⁴ *Id*.

⁷⁶ Burger King, supra note 46, at 268 (In 1985, the Rivera's president, Arthur Waltzman, publicly proclaimed, "[w]e're targeting Middle America.") (citing Kristof, supra note 62, at

⁷⁷ *Id.* at 268.

⁷⁸ Martinez, supra note 67, at 1.

⁷⁹ See generally Bryan, supra note 52, at 12.

⁸⁰ Burger King, supra note 46, at 269 (citing Kristof, supra note 62, at D1).

⁸¹ See id. at 261-62.

⁸² See *id.* at 271-72; Mullaney, *supra* note 4, at 241.

⁸³ William A. Bible, Current Issues Facing the Gaming Control Board 28, paper presented at the 11th Annual Nevada Gaming Conference and Workshop (Reno, Nev., May 16-17, 1989; Las Vegas, Nev., May 18-19, 1989) (available in the UNLV Center for Gaming Research).

⁸⁴ LICENSE To STEAL, *supra* note 14, at 32.

⁸⁵ Burger King, supra note 46, at 273.

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98

Mirage made the wave of gaming expansion in the '90s possible and served as a testament to Bryan's astute leadership through the early-'80s decline. In the same way, Governor Bryan's selection of sharp gaming regulators who shared his standards for integrity and sound gaming regulation helped guide the gaming industry through the obstacles created by this expansion.

VI. "FAIR AND TOUGH": GOV. BRYAN'S GAMING REGULATORY APPOINTMENTS

The governor of Nevada has wide discretion in appointments to the Board and Commission because these appointments do not require the state legislature's approval.86 In fact, gaming regulatory appointments are among a Nevada governor's most important appointments⁸⁷ because of the gaming industry's central economic role in the state. Governor Bryan understood that his singular-authority in gaming regulatory appointments gave him added political clout, but his leadership approach carefully avoided public displays of the use of power.⁸⁸ Instead, Bryan chose to take an objective, understated approach when he appointed gaming regulators. His appointees were capable, independent, and dedicated to keeping the gaming industry free from undesirable elements. Rather than appoint his friends or members of his own political party, Bryan sought gaming regulators who were "fair and tough" and who possessed expertise in their respective fields.⁸⁹ As such, Bryan's gaming regulatory appointees were among the highest qualified people who ever served the state. With each appointment, Bryan displayed his commitment to Nevada gaming by selecting appointees who valued and protected the integrity of the gaming control system.

A. Michael Rumbolz: From Blackjack Dealer to Chairman of the Board

Michael Rumbolz, former Board Chairman, praised Bryan's straightforward approach in appointing Board members; "politics did not enter into any of his appointments." Rumbolz had a longstanding interest in Nevada gaming; he dealt blackjack and poker throughout college and law school. During his early career in private law practice, Rumbolz represented several large gaming clients. In 1983, he went to work for Nevada's Republican attorney general as the chief deputy of the gaming division. When Governor Bryan interviewed him for an open position on the Board, Rumbolz recalled that Bryan did not ask about his political party affiliation: "He wasn't interested in my polit-

 $^{88}\,$ Hal Rothman, Neon Metropolis: How Las Vegas Started the Twenty-First Century 145 (2002).

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⁸⁶ MICHAEL W. BOWERS, THE SAGEBRUSH STATE: NEVADA'S HISTORY, GOVERNMENT, AND POLITICS 79, 81 (2d ed. 2002).

⁸⁷ *Id.* at 79.

⁸⁹ Bryan Interview, *supra* note 1.

⁹⁰ Interview with Michael Rumbolz, former Chairman, Nev. Gaming Control Bd., in Las Vegas, Nev. (Apr. 20, 2009) [hereinafter Rumbolz Interview].
⁹¹ Id.

⁹² LICENSE TO STEAL, supra note 14, at 215.

⁹³ *Id*.

Spring 2011] RICHARD H. BRYAN AND NEVADA GAMING

ics . . . that never came up."94 Instead, Bryan recognized that Rumbolz's diverse gaming experience representing both the applicants and gaming regulators made him well suited for a seat on the Board.

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B. Guy Hillyer: Rising Through the Ranks of the Board's Staff to Board Member

Another key appointment for Bryan was Guy Hillyer, the second appointee in the Board's history to rise from within the agency's staff to become a Board Member. 95 Hillyer started with the Board as an audit agent and received a series of promotions until he became chief of the audit division.⁹⁶ At the time of his appointment, Hillyer had been on staff with the Board for ten years.⁹⁷ Bryan felt that Hillyer's background in finance as a certified public accountant and his familiarity with the Board's structure made him a natural choice.⁹⁸ Bryan's instinct on Hillyer proved to be true. While he served on the Board, Hillyer utilized his financial expertise to oversee a new game laboratory where Board agents tested the accuracy of proposed games.⁹⁹

C. Bart Jacka: Rising Through the Ranks of the Board's Staff to Board Member

Bryan appointed S. Barton "Bart" Jacka to the Board to utilize his law enforcement experience and proven administrative skills to benefit the gaming industry. 100 A graduate of the Federal Bureau of Investigation's National Academy, Jacka served as Assistant Sheriff with the Las Vegas Metropolitan Police Department¹⁰¹ before Republican governor Robert List appointed him as Director of the Department of Motor Vehicles. 102 Jacka's success in that position prompted Bryan to appoint Jacka as Director of Nevada's largest state agency at the time, the Department of Human Resources. When Bryan was looking for a successful administrator to serve on the Board, he once again turned to Jacka¹⁰⁴ and named him the Board's chairman soon thereafter.¹⁰⁵ Bryan knew Jacka would methodically analyze each situation and trusted him

⁹⁴ Rumbolz Interview, supra note 90.

⁹⁵ Biography of Guy T. Hillyer, former Member, Nev. Gaming Control Bd., prepared for the 8th Annual Gaming Conference and Workshop (Reno, Nev., May 28, 1986) [hereinafter Hillyer Biography] (on file with the UNLV Center for Gaming Research).

⁹⁶ Id.

⁹⁷ *Id*.

⁹⁸ Bryan Interview, *supra* note 1.

⁹⁹ Hillyer Biography, *supra* note 95.

¹⁰⁰ Telephone Interview with S. Barton "Bart" Jacka, former Chairman, Nev. Gaming Control Bd. (Apr. 21, 2009) [hereinafter Jacka Interview].

¹⁰¹ Biography of S. Barton "Bart" Jacka, former Chairman, Nev. Gaming Control Bd., prepared for the 8th Annual Gaming Conference and Workshop (Reno, Nev., May 28, 1986) [hereinafter Jacka Biography] (on file with the UNLV Center for Gaming Research).

¹⁰² Jacka Interview, supra note 100. See also Jacka Biography, supra note 101.

¹⁰³ Jacka Biography, supra note 101.

¹⁰⁴ Bryan Interview, *supra* note 1.

¹⁰⁵ Jacka Biography, supra note 101.

UNLV GAMING LAW JOURNAL

unknown

[Vol. 2:89

to apply his day-to-day organizational skills and common sense police skills to Board matters. 106

D. Patricia Becker: the First Woman to Serve on the State Gaming Control **Board**

Governor Bryan appointed the first and only woman thus far to serve on the State Gaming Control Board, Patricia Becker. As chief deputy attorney general of the gaming division under Bryan's leadership, Becker successfully presented the state's position on gaming control in several high-visibility cases. 107 She also presented proposed amendments to the Nevada Gaming Control Act to state legislators. 108 Because Bryan respected Becker's legal acumen and extensive knowledge of Nevada gaming law, he asked her to serve on the Board the day after his election. 109

Becker's appointment was a milestone for the Board. However, the gendered significance of her appointment was not apparent to Bryan or Becker until the ensuing media blitz. 110 When news of her appointment hit the front page of the newspaper, Governor Bryan provided Becker with professional support. Although they had not discussed the politics of her appointment before the media attention, Becker remembers that Governor Bryan personally introduced her to several gaming operators to show his support. 111 Bryan believed that Becker's time in the gaming division would give her an advantage as a regulator, 112 and he was right. Becker feels she was able to hit the ground running as a Board Member because she "knew gaming law backwards and forwards."113 Becker was an accomplished addition to the Board who fit the description of a fair and tough regulator—regardless of gender.

Keeping Politics Out of Gaming Control

Governor Bryan managed to keep politics out of gaming control by keeping himself out of the process. He publicly stated that his office would never get involved with licensing decisions. 114 In the past, governors attempted to influence Board decisions and even called members at home to discuss pending matters. 115 However, Bryan wanted the gaming regulators to make independent decisions. 116 Becker, Jacka, and Rumbolz all agree that Governor Bryan honored his public statement and did not attempt to contact them on pending

¹¹² Bryan Interview, *supra* note 1.

¹⁰⁶ Bryan Interview, *supra* note 1.

¹⁰⁷ Becker Interview, supra note 27.

¹⁰⁸ Biography of Patricia Becker, former Member, Nev. Gaming Control Bd., prepared for the 8th Annual Gaming Conference and Workshop (Reno, Nev., May 28, 1986) (on file with the UNLV Center for Gaming Research).

¹⁰⁹ Becker Interview, supra note 27.

¹¹⁰ *Id*.

¹¹³ Becker Interview, supra note 27.

¹¹⁴ LIONEL SAWYER & COLLINS, *supra* note 12, at 253.

¹¹⁵ Rumbolz Interview, *supra* note 90.

¹¹⁶ Bryan Interview, supra note 1.

matters. 117 Becker said that there was a major difference in her communications with Bryan during her time on the Board and her time at the attorney general's office. 118 She no longer had input from Bryan as governor; instead, he wanted her to make decisions free from any political influence. Rumbolz recalled that Governor Bryan's only requirement was that he not be surprised by a controversial decision because Bryan knew "he was going to get the next phone call."119 In fact, the only time Bryan inquired of Rumbolz was when he called to make sure that a prominent licensee did not have any pending matters before the Board before accepting a campaign donation to avoid the appearance of a quid pro quo arrangement. It should come as no surprise that many regard Bryan as "Mr. Integrity." 120

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Gov. Bryan's Appointees Handled Many "Firsts" For the Nevada Gaming Industry

Bryan's gaming regulatory appointments set precedents in ways he probably never predicted because of the novel issues that arose during their tenures. For example, Bryan's appointees first encountered "greenmailing"—a situation in which an investor buys enough of a casino company's stock to pose a hostile takeover threat and then forces the casino to buy its own shares back at a premium price. 121 Another first, Nevada gaming regulators entered into an agreement with the Fort Mojave Tribe that allowed the Tribe to establish gaming on their land in October 1987, one year before the adoption of the federal Indian Gaming Regulatory Act. 122 Bryan's appointees also approved a gaming license for the first foreign national in the state's history, guided gaming licensees through bankruptcy, and emphasized use of the "Black Book" to keep the industry free from cheating.¹²³

Governor Bryan's gaming regulators made countless pivotal decisions for the Nevada gaming industry. One notable issue for his appointees was casino cash-reporting requirements. Although the United States Treasury Department categorized casinos as "banking institutions," 124 regulations tailored for traditional banks posed unique difficulties for casinos. As a result, Nevada gaming regulators and congressional representatives, including Bryan once he entered the Senate, successfully advocated for a Treasury exemption that allowed Nevada casinos to follow state cash-reporting procedures to track the billions of dollars that moved through the casinos each year. 125 Nevada's cash-reporting guideline, Regulation 6A, proved to be very effective, and ultimately, more

¹¹⁷ Becker Interview, supra note 27; Rumbolz Interview, supra note 90; Jacka Interview, supra note 100.

¹¹⁸ Becker Interview, *supra* note 27.

¹¹⁹ Rumbolz Interview, supra note 90.

 $^{^{120}\,}$ Jeff Burbank, Las Vegas Babylon: True Tales of Glitter, Glamour, and Greed 190 (2005) [hereinafter Las Vegas Babylon]. See also Editorial, Bryan Retires, Las VEGAS REV. J., Jan. 13, 2001, at 12B [hereinafter Editorial] (stating that "integrity" is the word mentioned frequently in retrospectives on Sen. Bryan's career).

¹²¹ LICENSE To STEAL, *supra* note 14, at 32.

¹²² Bible, *supra* note 83, at 12.

¹²³ Rumbolz Interview, supra note 90.

¹²⁴ LICENSE TO STEAL, *supra* note 14, at 32.

¹²⁵ *Id*.

UNLV GAMING LAW JOURNAL

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[Vol. 2:89

stringent than the federal regulation. The successful resolution of cash-reporting procedures was a win-win for state and federal officials. These significant groundbreaking appointments and regulatory decisions helped shape Nevada's gaming regulation long after Bryan moved on to the United States Senate.

VII. BRYAN'S ACTIONS AS UNITED STATES SENATOR

Bryan defeated another incumbent, Chic Hecht, for Nevada's junior United States Senate seat in 1988. 127 Once in the Senate, Bryan continued to support the Nevada gaming industry in many ways. As a member of the Senate Finance Committee, he successfully opposed the creation of additional taxes on the gaming industry. 128 He worked with the United States Treasury to streamline casino cash-reporting requirements and reduce the voluminous amounts of related paperwork. He nixed a proposal to increase casino patron withholdings on winnings—a change that would have curtailed gaming activity and impaired casinos' ability to run their operations. Further, as a member of the Senate Commerce Subcommittee on Tourism, Bryan urged his colleagues to support legislation promoting United States tourism abroad. 129

Perhaps Bryan's greatest victory on behalf of Nevada gaming, however, was his outstanding efforts to keep collegiate sports betting alive and well. He found a way to protect the "Las Vegas Loophole" from congressional attempts to kill legalized sports wagering, in part, by ensuring that three Nevada gaming heavy weights would participate in a federal study of gaming. With these crowning achievements for Nevada gaming in hand, Bryan was ready to retire from public service.

A. The "Las Vegas Loophole"

Senator Bryan's efforts were instrumental in safeguarding Nevada's exemption from the Professional and Amateur Sports Protection Act ("PASPA"), which prohibits gambling on most sporting events. ¹³⁰ In 1992, President George H.W. Bush signed PASPA into law in order to secure the integrity of athletic competitions and to stop the spread of state-sanctioned

It shall be unlawful for-

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¹²⁶ Rumbolz Interview, supra note 90.

Editorial, Bryan to Step Down, Las Vegas Rev. J., Feb. 19, 1999, at 18B.

¹²⁸ Bryan Interview, *supra* note 1.

¹²⁹ Janine DeFao, Bryan Wants Fund Hike for Tourism Promotion, Las Vegas Rev. J., July 11, 1991, at 4B.

See generally Professional and Amateur Sports Protection Act of 1992, S.B. 474, 102d
 Cong., Pub. L. No. 102-559, 106 Stat. 4227 (1992) (codified at 28 U.S.C. §§ 3701-3704 (2006)). The central provision to PASPA provides:

⁽¹⁾ a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

⁽²⁾ a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games).

²⁸ U.S.C. § 3702 (2006).

gambling.¹³¹ Because some type of sports wagering was legal in four states prior to October 2, 1991, 132 Congress carved out a PASPA exemption for Nevada, Oregon, Delaware, and Montana. 133 In doing so, Congress acknowledged that a federal prohibition of sports wagering in these states would produce harsh results.¹³⁴ Prior to the PASPA legislation, Nevada licensed 153 sports books; thus, a prohibition on sports betting could have devastated the multi-billion dollar industry. 135 The exemption has become known as the "Las Vegas Loophole" because Nevada is the only state where wagering on collegiate sporting events is legal. 136

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Critics of the Las Vegas Loophole believed that the growing trend of illegal sports wagering nationwide resulted from Nevada's PASPA exemption. 137 Senator Bryan recognized, however, "[t]he idea that the problem with gambling among young people is legalized sports [betting] misses the mark by a mile." ¹³⁸ Besides having a grave impact on the Nevada economy, gaming industry proponents pointed out that a prohibition on legal collegiate sports wagering would do nothing to curb illegal wagering or to decrease a desire to gamble. 139 However, the increasing political sentiment called for a repeal of Nevada's exemption as a way to protect the integrity of collegiate athletics and to stop the proliferation of underage and illegal sports wagering.

The National Gambling Impact Study Commission

Congress responded to these concerns, among others, by establishing the National Gambling Impact Study Commission ("NGISC") in 1996 to conduct a "comprehensive legal and factual study of the social and economic impacts of gambling."140 The NGISC would examine the impact of legal and illegal gambling on federal, state, local, and Native American tribal governments along

¹³¹ Ronald J. Rychlak, A Bad Bet: Federal Criminalization of Nevada's Collegiate Sports Books, 4 Nev. L.J. 320, 322 (2003-2004) (citations omitted).

¹³² 28 U.S.C. § 3704(a)(1) (2006) (provides that Section 3702 shall not apply to "a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990.").

¹³³ Aaron J. Slavin, The "Las Vegas Loophole" and the Current Push in Congress Towards a Blanket Prohibition on Collegiate Sports Gambling, 10 U. MIAMI BUS. L. REV. 715, 719

¹³⁵ Id. at 720. See also Nat'l Gambling Impact Study Comm'n [hereinafter NGISC], FINAL REPORT 2-14 (1999) (reporting that in 1998 alone, legal sports wagering in Nevada sports books amounted to \$2.3 billion).

¹³⁶ Rychlak, *supra* note 131, at 323 (citations omitted).

¹³⁷ *Id*.

¹³⁸ Jon Marcus, College Gambling Under Scrutiny, Times Higher Educ. Supp., Aug. 6, 1999 at 11 (brackets in original).

¹³⁹ Rychlak, *supra* note 131, at 327 (citations omitted). Rychlak quotes John Shelk, vice president of the American Gaming Association, who once said that blaming legalized sports wagering was "sort of like saying that there is an underage drinking problem on campus, so let's stop adults from going to the restaurant and having a glass of wine." Id. (citations

¹⁴⁰ NGISC, CHARTER (June 15, 1997).

[Vol. 2:89

10:14

UNLV GAMING LAW JOURNAL

with local communities and social institutions. 141 There is no question that the NGISC needed members with diverse backgrounds, but surprisingly, the majority of the commissioners either had no knowledge of the gaming industry or had negative views towards it.142

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The Nevada gaming industry needed strong representation on the NGISC to bring balance to the distorted calls for revocation of the Las Vegas Loophole. Bryan recognized that the NGISC had the "potential of becoming a 'witchhunt' instead of a legitimate study." ¹⁴³ Accordingly, Senator Bryan insisted upon the appointment of three NGISC commissioners to ensure fairness to Nevada gaming: 144 William Bible, Chairman of the Nevada State Gaming Control Board; J. Terrance Lanni, Chairman of the Board and Chief Executive Officer of MGM Mirage; and John Wilhelm, President of the Hotel Employees and Restaurant Employees ("HERE") International Union. 145 Bryan's diligence secured these key appointments and provided the crucial counter-balance to the other commissioners' lack of gaming experience.

The NGISC's final report contained mixed conclusions, but it ultimately ensured that Nevada would retain its PASPA exemption. After a narrow onevote majority, the NGISC's final report advised Congress to ban all legalized collegiate and amateur sports wagering. 146 More importantly, NGISC members agreed, "gambling is not a subject to be settled at the national level, but is more appropriately addressed at the state, tribal, and local levels." ¹⁴⁷ Chairman James recognized that the NGISC's final report could not endorse a "single national, one-size-fits-all approach[.]" After two years of vigorous advocacy on the NGISC, Bryan's strategic contributions to Bible, Lanni, and Wilhelm's appointments were crucial to protecting Nevada's gaming interests. 149

After the NGISC issued a final report, several Congressional bills were introduced to revoke the Las Vegas Loophole; however, not one of these bills was signed into law. 150 Senator Bryan, along with the other members of Nevada's congressional delegation, successfully blocked federal legislation that would have proscribed collegiate sports betting—a vital part of Nevada's gaming industry. In an attempt to attack the underlying problem, Bryan proposed alternative legislation to deter and punish illegal collegiate sports wagering. On

¹⁴¹ *Id*.

¹⁴² See NGISC, Member Biographies (June 15, 1997). See also NGISC, Final Report 52 (1999), where Dr. Dobson, founder and president of Focus on the Family, stated "Gambling is hazardous to your-to our-health!"

¹⁴³ Melissa Weinstein Kaye, LAW/JUDICIARY: Smooth Sailing is Expected for Gambling Commission, CQ WKLY ONLINE (July 20, 1996 8:53 PM), http://library.cqpress.com/cq weekly/WR402289.

¹⁴⁴ Bryan Interview, *supra* note 1.

¹⁴⁵ NGISC, Member Biographies (June 15, 1997). In 1999, the NGISC website reported that HERE represented 75,000 casino employees, more than any other union. Mr. Wilhelm had been employed by HERE or its local unions since 1969 and served as General Secretary-Treasurer from 1996 until his election as HERE's President in 1998.

¹⁴⁶ NGISC, Final Report 50 (1999).

NGISC, Final Report, Introduction (1999).

¹⁴⁹ Bryan Interview, supra note 1. See Bob Faiss, Against the Odds: Reflections on a Career in Gaming Control and Gaming Law, 12 GAM. L. REV. 25, 28 (2008).

¹⁵⁰ Rychlak, *supra* note 131, at 324 (citations omitted).

105

Spring 2011] RICHARD H. BRYAN AND NEVADA GAMING

February 2, 2000, Senators Bryan, Harry Reid (D-Nevada), Robert Torricelli (D-New Jersey), and Max Baucus (D-Montana) introduced Senate Bill 2050 entitled "Combating Illegal College and University Gambling Act" to investigate illegal gambling on college sports and to recommend effective countermeasures to combat this serious national problem.¹⁵¹ Senator Bryan understood that the best way to protect the integrity of collegiate athletics and to stop the proliferation of underage and illegal sports wagering was to enforce the laws on the books properly, not to create new prohibitions. 152 His work ensured that the billion dollar sports betting industry would continue to flourish in Nevada.

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Stepping Down From Public Service

After twelve years representing Nevada in the United States senate, Bryan decided that he would not seek re-election in 2000. 153 Although his resignation meant the Silver State would lose a "competent and hard-working senator," 154 Bryan's tenure in the United States Senate was fruitful. In addition to his efforts on behalf of the gaming industry, Bryan led the quest against the Yucca Mountain nuclear waste dump, passed landmark legislation facilitating the sale of federal land in Southern Nevada while keeping the proceeds within the state, passed legislation against telemarketing fraud, and introduced legislation to increase vehicle fuel efficiency standards. 155 President Clinton praised Senator Bryan's celebrated career by acknowledging him as "a staunch advocate and tireless champion of the people of Nevada."156 Bryan brought a "joy and enthusiasm" to public service¹⁵⁷ that allowed him to represent Nevada effectively.

VIII. CONCLUSION: A CELEBRATED LEGACY FOR NEVADA GAMING

The Nevada gaming industry holds a particular debt of gratitude to Senator Bryan for setting the gold standard of integrity in gaming regulation. His support for the gaming industry never wavered in the face of economic downturn or political opposition because he always understood that gaming is not just an ephemeral pastime in Nevada—it is a way of life that must be protected. Furthermore, Bryan knew gaming was the "engine that fueled the [Nevada] economy,"158 so he diligently worked to keep the gaming industry alive and

155 Bryan Interview, supra note 1.

¹⁵¹ S.B. 2050, 106th Cong. (2000). See also Jeffery R. Rodefer & Daurean G. Sloan, Nevada's Proposal to Strengthen Its Collegiate Sports Betting Regulations & the NCAA's Push For a Congressional Ban, The Gaming Lawyer, Winter 2001, reprinted in Nev. LAWYER, Mar. 2001, at 10, 11-12.

¹⁵² Bryan Interview, *supra* note 1.

¹⁵³ Editorial, supra note 120, at 12B. Editorial, Bryan to Step Down, Las Vegas Rev. J. Feb. 19, 1999, at 18B.

¹⁵⁴ *Id*.

¹⁵⁶ Statement on Senator Richard H. Bryan's Decision Not To Seek Reelection, 1 Pub. Papers 206 (Feb. 18, 1999).

¹⁵⁷ Editorial, *supra* note 120, at 12B.

¹⁵⁸ Senator Richard H. Bryan, Foreword to Geoff Schumacher, Sun, Sin, and Suburbia: An Essential History of Modern Las Vegas 11 (2004).

10:14

UNLV GAMING LAW JOURNAL

[Vol. 2:89

healthy. As a result, Bryan's resolute conduct established a lasting legacy for the gaming industry.

Bryan's reputation for integrity pales his list of political triumphs because his record demonstrates that pecuniary gain never motivated his political ambition. The *Las Vegas Review Journal* recognized that Senator Bryan "was never accused of using his office to help enrich himself, or his political pals." Integrity is more than just a buzzword for the gaming industry. Without Bryan's honor and commitment, the American people would not have learned to trust the veracity of the games or the independence of gaming regulators. Thus, Richard H. Bryan's steadfast leadership and reputation for *keeping it clean* made it possible for the Nevada gaming industry to achieve exponential growth and international respect. Indeed, "Nevada may search long and hard to find another like him." 160

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¹⁵⁹ Editorial, supra note 120, at 12B.

¹⁶⁰ *Id*.