

SYMPOSIUM: NEVADA LAW AT 150

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The year 2014 marks 150 years of statehood for Nevada, which was “Battle Born” into a fast track of joining the Union (with only three years as a territory) in large part because of Civil War-related political exigencies. Congress wanted to add this new State so much that Nevada became part of the United States – and subject to a sesquicentennial status — decades before many of its Western sibling states. Anniversaries can be good occasions for reflection. Although no compilation of articles can do justice to the richness of 150 years of legal heritage, in this small symposium the authors address Nevada law of particular interest. Despite the brevity of the symposium, the observations range widely.

Beginning at the beginning, Professor Tom McAfee and Attorney Justin McAfee examine the founding Nevada Constitution and its text and infrastructure regarding education.¹ Specifically, they address the portion of the constitution regarding the establishment of educational institutions, essentially concluding that the state has been in the grip of erroneous legal analysis that unduly limits the authority of the legislature to create new and more flexible governing bodies for state colleges and universities.

Applying a close reading of constitutional text with an appreciation of the background purposes of the document and the public policy surrounding higher education, they conclude that the legislature has considerably more power than historically supposed “to establish additional schools of higher education in the state, as well as the authority to establish and set forth how such schools will be governed.”² Recognizing this legislative power and flexibility would, they contend, encourage more public-private collaboration, more flexible delivery of educational services, and more effective meeting of the vocational, economic, and demographic needs of the state.³

Moving ahead nearly a full century, Professor Thom Main traces the development, beginning in the mid-Twentieth Century, of Nevada’s process for examining and amending civil litigation rules.⁴ Reviewing the federal system’s methodology⁵ as well as surveying other states in the West, including all those

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¹ See Thomas B. McAfee & Justin James McAfee, *Nevada Public Policy and Higher Education: The Roles of the Legislature and the Board of Regents Under the Nevada Constitution*, 14 NEV. L.J. 833 (2014).

² *Id.* at 833–34 nn.4–5 and accompanying text.

³ *Id.* at 850–51 nn.112–21 and accompanying text.

⁴ See Thomas Main, *Civil Rulemaking in Nevada: Contemplating a New Advisory Committee*, 14 NEV. L.J. 852 (2014).

⁵ *Id.* at 855–56 nn.19–29 and accompanying text.

bordering Nevada, he finds considerably more use of standing committees in other states,⁶ a feature that arguably creates undue pressure to make new rules for the sake of making new rules but that also holds the prospect of applying a more scientific approach to rulemaking in which problems are addressed before reaching perceived crisis points.⁷

Notwithstanding the danger that an established committee will feel undue pressure to justify its existence, Professor Main advocates experimenting with this approach and offloading much of the rule revision pressure that currently impinges on an already overburdened Supreme Court.⁸

My own contribution admittedly verges on the polemic (one hopes with adequate cause), addressing Nevada's long-standing (and in my view, unjustified and unfair) legal protections accorded to the liquor and hospitality industries.⁹ The article reviews the history of liquor-related tort liability, in particular the emergence of "dram shop" laws,¹⁰ Nevada's rejection of such liability,¹¹ and the Court's unfortunate willingness to expand this immunity to cases where a commercial host is arguably negligent in ways that go far beyond merely serving alcohol to the already intoxicated,¹² all in derogation of providing jury review of the manner in which commercial hosts treat their guests.

Although these three examinations of Nevada law only scratch the metaphorical surface of the topic, we hope they illuminate important concerns of law and public policy and will encourage additional scholarly examination as the state's legal system enters the second half of its second century.

⁶ *Id.* at 856–72 nn.30–79 and accompanying text.

⁷ *Id.* at 863–64 nn.87–93 and accompanying text.

⁸ *Id.* at 864–65, 864 n.91 and accompanying text.

⁹ Jeffrey W. Stempel, *Making Liquor Immunity Worse: Nevada's Undue Protection of Commercial Hosts Evicting Vulnerable and Dangerous Patrons*, 14 NEV. L.J. 866 (2014).

¹⁰ *Id.* at 868–74 nn.10–41 and accompanying text.

¹¹ *Id.* at 874–78 nn.42–59 and accompanying text.

¹² *Id.* at 678–84 nn.60–79 and accompanying text.