

NEVADA'S TERRITORIAL COURTS: AN UNRECOGNIZED POLITICAL INFLUENCE TOWARD STATEHOOD

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The story of how early territorial courts influenced Nevada statehood has never been fully written.¹ The story provides more than historical perspective; it informs our understanding of the Nevada Constitution and provides guidance for contemporary jurisprudence.² The story is also a compelling narrative, involving strong personalities, intriguing political shifts and allegations of corruption throughout the entire civil justice system.

Nevada students are taught that Nevada became a state in order to assist President Abraham Lincoln's re-election campaign and to provide additional congressional support for the 13th Amendment and post-war reconstruction.³ But statehood was a bi-lateral event that required the consent of the territorial residents, and electoral approval was not certain. The territorial residents authorized a constitutional convention in September, 1863, by a 4-1 margin, only to reject statehood by an 8-1 margin in January, 1864. Why they approved statehood by an 8-1 margin a mere eight months later is a question to consider during this sesquicentennial year.

The historical records reveal that residents of the Nevada Territory embraced statehood, in large measure, to rid themselves of a judiciary they perceived as corrupt and unable to provide protection of the laws. Voters blamed endless litigation for the deep 1864 mining recession and believed judicial reform was the only possible cure. As one delegate to the second constitutional convention observed, "I know that many are going to vote for the Constitution in order that we may be released from the present judiciary system."⁴ If this story is accurate, it must be folded into the historical record of our state and judiciary.

When mineral wealth was first discovered in 1859, the geographic area fell under the control of the Utah Territory. There was no effective court system in place. Understanding their need for order, the miners formed a mining district and adopted simple rules of rights and conduct.⁵ The informal rules disassembled almost as quickly as they were written. Miners began disputing their claim boundaries and the geological structure of the subsurface quartz veins. The absence of a court system was a primary impetus for a separate territorial status.

President Lincoln created the Nevada Territory and appointed three territorial judges in 1861. Each judge served as the trial judge in his assigned district, and together they composed the three-judge Nevada Territorial Supreme Court. When Judge Gordon Mott opened court in Virginia City in 1862, there were already a "multitude of suits" that had been languishing for a year.⁶ The First District became the epicenter for an "orgy of litigation" that involved more than 2,300 lawsuits during the territorial years. Litigation expenses aggregated to \$10 million and consumed 20 percent of all mining revenue during this time.

Mott was not equipped to manage the litigation; but, in fairness, no single judge could have been successful. Mott confronted a volume of litigation without adequate staff, procedural infrastructure or established law. Most importantly, the geological structure of the mineral wealth was unknowable. The large, consolidated mining interests owned by San Francisco financiers advanced a single-ledge theory, whereas the individual mining interests could maintain their claims only if the

quartz veins emanated from multiple subsurface ledges. At issue were tens of millions of dollars. William Stewart, who later served as a U.S. Senator from Nevada, was the leading lawyer for the conglomerated mining interests. He reportedly earned \$500,000 between 1861 and 1864, and as much as \$200,000 in his most lucrative year. Anecdotes suggest that evidence was manufactured, witnesses were unreliable, juries were manipulated and judges were susceptible to inappropriate influences.⁷ The rule of law was apparently subsumed by the financial fortunes at issue.

Mott was favorable to the multiple-ledge theory, and thus a danger to the large corporate interests that owned the original claims. He resigned during the summer of 1863, under suspicious circumstances, including the allegation he was paid \$25,000 to resign. He was replaced by John North, a member of the local bar and former surveyor general for the territory. North's appointment set up a contest between North and Stewart that would enflame the public and influence the statehood question for an entire year.

Governor James Nye set in place the procedures for a constitutional convention in December, 1863, and a statehood vote in January, 1864. The expectation for success was high leading up to the convention. North was selected as the convention chairman, and Stewart attended the convention as a delegate. Despite a significant disagreement about how to tax mining interests, the convention ended with continuing expectations of statehood success. Yet the voters rejected statehood by a large margin on January 19, 1864.

Historians have explained the electoral defeat by reference to the unpopular mining tax provision and dissatisfaction with the single-slate of Union Party nominees (including judges), who would be elected concurrent with the vote for statehood. These explanations are initially attractive, yet they do not explain why Stewart campaigned for statehood despite the tax provision he vehemently opposed, or the extent to which the statehood vote was a referendum on North and a repudiation of Stewart's attempt to re-shape the judiciary.

North had ruled in favor of the multiple-ledge theory in the late fall of 1863, which placed Stewart and his wealthy clients in a difficult position. They needed statehood in order to replace the territorial judges with locally elected judges who might be receptive to the single-ledge theory. One noted historian argues that Stewart made the calculated political decision to undermine North and the other territorial judges through public allegations of corruption. Stewart and his legal allies fearlessly used the press to accuse North of:

1. Being favorable to black suffrage;
2. Being placed upon the bench by the multiple-ledge mining interests; and
3. Bribery and financial self-dealing.

Stewart also packed the Storey County Union Party nominating convention to ensure North would not be elected governor and that Stewart's chosen nominees would populate the new state's legislature and judiciary.

After Stewart's law partner published accusations of North's supposed corruption, Stewart challenged North to a public debate at the Maguire Opera House. To Stewart's surprise, North answered the challenge, and the two men debated their respective positions before a packed house, just four days before the statehood vote. The press reported that North vindicated himself well and rebuffed Stewart's scandalous allegations.

While statehood seemed inevitable at first, public sentiment quickly collapsed because of perceptions that Stewart was advocating statehood to enrich himself and his wealthy, powerful mining clients against the interests of the individual

"The absence of a court system was a primary impetus for a separate territorial status."

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miners. The press turned against statehood, as illustrated by the *Virginia Daily Union*:

Stewart and Company want a state government because they have come to the conclusion that our present judiciary care more for the people and for justice than they do for the influence of improper combinations; and there are several legal gentlemen who like to have an opportunity to try the “one-ledge” theory before new and different judges. All the representatives of these private interests would like a State Government, and if they can obtain one, and thereby achieve their personal ends and advancement, it matters but little to them how immeasurable the disaster which would be inflicted on this Territory.

“The first battle for statehood left political and personal bruises that would take some time to heal. territorial status.”

The first battle for statehood left political and personal bruises that would take some time to heal. One newspaper suggested that any future statehood attempt be delayed at least one year. But President Lincoln and Governor Nye had other plans. On March 21, 1864, Lincoln signed an act re-authorizing statehood. On May 2, 1864, Nye proclaimed that another constitutional convention would take place in July, with a vote on statehood to follow in September. Because of its population, Storey County had twice the number of delegates elected to the convention than any other county. This was significant because the First District was essentially vacant due to an ailing and/or politically weary North, hundreds of languishing cases and the deepening recession ascribed to judicial impotence.⁸

In May, the Nevada Territorial Supreme Court stained its stature when it entered a decision regarding the geological structure of the Comstock Lode. The decision was beset by ex-parte mining influences, and one of the justices changed his written position several times within a span of days. The convention delegates were well aware of the ineffective territorial judiciary, and their experiences with the courts informed several constitutional features, such as the composition of civil juries, the preference of district courts over county courts, election of judges, the size and composition of the Supreme Court, the propriety of civil filing fees, and, most notably, the provisions for impeachment and removal of judges. The delegates referred to statehood, throughout the convention, as a way to purge the territory of its federally appointed judiciary.

During the constitutional convention in July, and in the weeks preceding the vote on statehood, the newspapers

published more than 70 sensational and inflammatory articles condemning the judges. Approximately 3,500 residents in Virginia City and Gold Hill signed a petition for the removal of the territorial judges in August. On August 22, 1864, all three territorial judges resigned, leaving the territory without a judiciary. The vote on September 7 was, among other things, the repudiation of a judiciary perceived to be corrupt. In Storey County, where the majority of mining litigation was located, the vote was 5,548 for, and a mere 142 against, statehood.

There is no known direct evidence of judicial corruption, and there is some indirect evidence to vindicate North. But whether actual or mere appearance, judicial corruption fomented an irreparable discontent that contributed as much as anything else to Nevada’s statehood 150 years ago. ■

1. Nevada political scientist Michael Bowers observed: “I have seen firsthand the dearth of scholarly research and publication on [the topics of law and courts in Nevada], for example, there is no published history of the Nevada Supreme Court...” See Michael W. Bowers, “Foreword” to *Nevada Historical Quarterly*, Spring 2000, at 3.
2. *Goldman v. Nevada Comm'n on Judicial Discipline*, 108 Nev. 251, 256, 830 P.2d 107, 110 (1992).
3. Gary BeDunnah, “Nevada: Our Home” 130 (2006); Michael W. Bowers, “The Sagebrush State” (3rd ed. 2006).
4. *Official Report Of The Debates And Proceedings In The Constitutional Convention Of The State Of Nevada Assembled At Carson City, July 4, 1864, Form A Constitution And State Government* 173 (Andrew J. Marsh, ed., 1866).
5. Hurbert Howe Bancroft, quoted in J.P. O’Brien, ed., *History of the Bench and Bar of Nevada* (San Francisco: Bench and Bar Publishing Co., 1913), 8.
6. Eliot Lord, *Comstock Mining and Miners*, 132 (Washington Government Printing Office, 1883).
7. For an examination of the “orgy of litigation” see Bruce Alverson, “The Limits of Power: Comstock Litigation, 1859–1864,” *Nevada Historical Society Quarterly* 43, no. 1 (Spring 2000): 75.
8. David A. Johnson, *California, Oregon and Nevada, 1840-1890: Founding the Far West*, 75.



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