

2022

Introduction to Nebraska Law Review, Volume 100:4

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Recommended Citation

Richard Moberly, *Introduction to Nebraska Law Review, Volume 100:4*, 100 Neb. L. Rev. (2021)

Available at: <https://digitalcommons.unl.edu/nlr/vol100/iss4/3>

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Richard Moberly*

Introduction to *Nebraska Law Review*, Volume 100:4

I am honored to write this brief (or, in the words of the managing editor's admonition to me: "very brief") introduction to Volume 100 of the *Nebraska Law Review*. As I write this, we are recovering from a two-year global pandemic, watching with trepidation the humanitarian crisis resulting from European armed conflict, and debating the appropriate level of government involvement in health mandates and education. In other words, the circumstances seem eerily like one hundred years ago when the first volume of this law review was published, as the country mended from the 1919–20 influenza pandemic, managed the fallout from World War I, and engaged in cultural battles debating governmental power to require school attendance and mandate the teaching of certain curricula.¹ The more things change, the more they stay the same perhaps.

Or, perhaps not. In many ways, this publication (and the College of Law itself) has changed dramatically and for the better since Volume 1. While this century-old publication has maintained its high quality, it has neither rested on its accomplishments nor simply rehashed the same tired debates. Like the University of Nebraska College of Law, its law review has continued to honor its past while also innovating, looking forward, and reflecting the very best of current legal analyses. As examples, we need look no further than this very issue of Volume 100, which contains insightful retrospectives as well as original examinations of modern legal issues from Nebraska Law alumni, faculty, and students.

In this issue, and in the forthcoming second issue of Volume 101, Russell Lovell and Anna Shavers present histories both personal and

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1. See Jill Lepore, *Why the School Wars Still Rage*, *NEW YORKER* (Mar. 14, 2022) (noting that a century after the *Scopes* trial "the battle over public education that afflicted the nineteen-twenties has started up again, this time over the teaching of American history" and that "[b]oth conflicts followed a global pandemic and fights over public education that pitted the rights of parents against the power of the state").

generalizable. In this issue, Lovell, a *Nebraska Law Review* alumnus who also taught for decades at Drake Law School, recalls a profound experience from his law school days that resulted in substantial changes to the law through the Supreme Court's *Morrissey v. Brewer* decision. Our current students have similar opportunities to engage in externships and clinical experiences that impact the lives of clients and advance the development of the law. In the second issue of Volume 101, Shavers presents a history of the Multicultural Legal Society (MCLS) at Nebraska Law, a history she helped create through her thirty years of teaching at the College of Law, her role as Associate Dean for Diversity and Inclusion, and her stalwart advocacy for, and support of, law students of color. I am so glad her voice is included in this 100th volume (during the fiftieth anniversary year of the MCLS) because it is one more way her influence will continue beyond her devastating and heart-wrenching death a few weeks ago – a tragedy that significantly impacted our entire community. Moreover, her telling of the MCLS story reflects the continued contributions of people with diverse backgrounds and perspectives on our modern law school community.

Another Nebraska Law professor (and *Nebraska Law Review* alumnus), Ryan Sullivan, provides a review of Nebraska's landlord-tenant law. Sullivan has become an expert in this area through his research, of course, but also through his tremendous on-the-ground experience in the eviction courts of Lancaster County, Nebraska. In the midst of an eviction crisis brought about by the COVID-19 pandemic, Sullivan began volunteering to provide pro bono legal representation to tenants facing eviction. What began as a solitary quest to reverse the significant disparity in legal representation between landlords and a few tenants developed into the Tenant Assistance Project (TAP), a multi-organization effort to represent every tenant in eviction court. Scores of TAP attorney and student volunteers have represented over 1,000 tenants during the last two years and facilitated the disbursement of over \$10 million in federal rental assistance. Moreover, TAP has changed the way landlord-tenant law is being practiced in Lancaster County, leveling the playing field between landlords and tenants, and leading to more equitable outcomes for tenants in financial distress. The legal analysis in Sullivan's article is backed up by hard-earned knowledge from literally hundreds of cases. Sullivan's scholarship is engaging with the law in real time as he uses his research to impact a significant housing crisis in our community.

Students have published in the *Law Review* for decades and it is wonderful to see two current students, Emma Franklin and Genesis Agosto, continue this tradition in this fourth issue of Volume 100. Franklin takes on the Eighth Circuit by questioning its determination

of “moral turpitude” in *Bakor v. Barr*. Agoso calls upon her background in history as well as the law to examine involuntary sterilizations of Native American women. Both are important pieces, and I am proud Nebraska Law students continue to use their legal education at Nebraska to produce written work of this quality.

That this legal education and law review experience will serve Franklin, Agosto, and their peers well can be demonstrated by looking at the careers of *Nebraska Law Review* alumni. Beyond Lovell and Sullivan, who both excelled in the legal academy, alumni have made substantial impact in a variety of fields. This was made clear during the celebration on April 9, 2022, honoring the publication of the 100th Volume. Speakers represented each decade of the *Law Review* since the 1950s and demonstrated the breadth of successful careers that were launched from membership in the *Law Review*. Deryl Hamann from the 1950s exemplified excellence in business as a lawyer and banker of great renown and Nebraska Supreme Court Justice Stephanie Stacy and retired Lancaster County District Court Judge Jefre Chevront provided the perspective of those who excelled from the bench. Other speakers included noted litigator David Domina (excellence in advocacy), State Senator Patty Pansing Brooks (excellence in public service), Nebraska Law Professor Anthony Schutz (excellence in academia), and Jaydon Pence (excellence in practice).

Although this cavalcade of speakers made clear that many essentials of the law review experience — hard work, attention to detail, rigorous legal analysis, persuasive writing — remain unchanged, other parts of the experience have had to adapt to changing circumstances. One such development is not a surprise: changing technology has required obvious changes to the *Law Review*. I am sure more people access digital versions of its articles through outlets such as Hein Online, Westlaw, and Lexis than look at hard copies. In recent years, the *Law Review* has published online bulletins with shorter, more focused essays on topics that may benefit from a more time-sensitive examination. I believe these types of changes have allowed the journal to continue, and even enhance, its impact on the development of the law in Nebraska, the Eighth Circuit, and beyond.

Despite this progress, we still have work left to do. The College of Law is focused on developing, in the words of our mission, “inclusive leaders who advance justice, solve problems, and serve with integrity.” The *Nebraska Law Review* plays an important role in this mission as it contributes to the development of legal thought, creates an equitable and inclusive culture, and publishes important scholarship that helps resolve thorny legal problems. One concrete step to support this mission that the *Law Review* has taken recently is to make its admission process more equitable.

For decades, most of the membership in the *Law Review* was determined by student grades during the first year. During the COVID-19 pandemic, the College used pass/no pass grades for first year grades in order to recognize the enormous disruption caused by moving to remote learning in a matter of weeks at the end of the spring 2020 semester. As a result, the *Law Review* that year chose its candidate members entirely with a write-on competition. Afterwards, the leadership of the *Law Review* determined that the write-on system worked better to select members motivated to do the work of the journal and from a broader range of backgrounds and perspectives. Ultimately, the members of the *Law Review*, with the full support of the College's faculty and administration, made permanent the change to a write-on competition to decide who could participate in the *Law Review*. I believe this has made the selection process more equitable and resulted in a membership interested in performing the important work of a law review without any drop off in quality. As important, it made the valuable law review experience, and the career opportunities exemplified by our anniversary celebration speakers, more accessible to a broader, more diverse set of students with skills more closely aligned with the work of a law review.

As important as this work is, one might reasonably ask why students are still interested in being a member if it no longer signals class rank and superior grades? In my view, the answer is that the work of the *Law Review* ultimately provides a signal of future lawyerly ability more powerful than first year grades. Working as a student editor exposes one to rigorous legal thought and in-depth critical analysis. Dissecting an author's logic and writing enhances one's own ability to create and critique cogent arguments and persuasive prose. Learning that details matter — yes, even the details of which commas in a “*see, e.g.,*” cite should be italicized — is an important lesson for prospective lawyers as often cases turn on small details overlooked by others. Finally, being on the *Law Review* simply sends the message that one is willing to work hard, because the work our student editors have performed for one hundred years is difficult and time consuming. It turns out that a lawyer's work is often the same, as it requires dedication and perseverance to master the practice of law and to achieve success for clients.

Ultimately, the *Nebraska Law Review* is reflective of the challenges of the practice of law. More broadly, perhaps, it is also a microcosm of the institutions engaged with the legal system, including the University of Nebraska College of Law itself, because we are all engaged in the delicate balance of respecting the wisdom of precedent while also looking forward to recognize when old assumptions and patterns need to change. How can we learn from a history that seems to

repeat itself so that we can end senseless and cyclical mistakes to create a different, more equitable future?

Although the current societal issues causing concern seem similar to those of a century ago, my hope is that institutions like law schools and law reviews can learn from the past to create better, more equitable outcomes to the challenges we face. More specifically, I am proud of the students on the *Nebraska Law Review* who, as we head into a second century, are continuing and improving upon the work of their predecessors in many ways, including rethinking the distribution of scholarly work and revamping how they select new editors. We are all better off for their efforts.