MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
April 6, 2005

The Committee on Judiciary was called to order at 8:13 a.m., on Wednesday, April 6, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Harvey Munford, Assembly District No. 6, Clark County (part)
Assemblyman Richard Perkins, Assembly District No. 23, Clark County (part)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Carole Snider, Committee Attaché

OTHERS PRESENT:

Paul Brown, Southern Nevada Director, Progressive Leadership Alliance in Nevada (PLAN)
Gary Peck, Executive Director, American Civil Liberties Union of Nevada
Amy Wright, Chief, Division of Parole and Probation, Nevada Department of Public Safety
Consuelo McCuin, Executive Director, Sista to Sista
Joni Kellongh Polk, Private Citizen, North Las Vegas, Nevada
Lucille Lusk, Chairman, Nevada Concerned Citizens
Nancy Becker, Chief Justice, Supreme Court of Nevada
Jack Schroeder, Justice of the Peace, Reno Justice Court, Nevada
Nancy Saitta, District Judge, Eighth Judicial District Court of Nevada
Chris Beecroft, Alternative Dispute Resolution Commissioner, Eighth Judicial District Court of Nevada
Roy Adams, Private Citizen, representing Spanish Springs Residents, Sparks, Nevada
Shirley Bertschinger, Private Citizen, representing Mesa Meadows Property Owners, Sparks, Nevada
Lynn Chapman, State Vice President, Nevada Eagle Forum
Carolyn Edwards, Member, Neighborhood Casino Committee, Las Vegas, Nevada
Michael G. Alonso, Legislative Advocate, representing Harrah's Entertainment Inc., Reno, Nevada
Anna Maria Serra-Radford, Private Citizen, Las Vegas, Nevada
Blake Cumbers, Vice President, Boyd Gaming Corporation, Las Vegas, Nevada
Russell Rowe, Legislative Advocate, representing Focus Property Group, Las Vegas, Nevada
Dan Papez, District Judge, Seventh Judicial District Court of Nevada
Richard Wagner, District Judge, Sixth Judicial District Court of Nevada
Daniel Wong, Assistant Solicitor General, Office of the Attorney General, State of Nevada
Matthew Jensen, Deputy Attorney General, Office of the Attorney General, State of Nevada
Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections

Chairman Anderson:
[Meeting called to order and roll taken.] The hearing for A.B. 452 is opened. Let me indicate that the Research Department has given us a copy of a bill that was looked at in the last session, Assembly Bill 55 of the 72nd Legislative Session, which also dealt with the restoration of voting rights. They have also provided a flowchart (Exhibit B), and we can use this as an outline of where we are going with this along with some updates.

Assembly Bill 452: Revises provisions relating to restoration of certain civil rights to certain convicted persons. (BDR 14-1124)

Assemblyman Harvey Munford, Assembly District No. 6, Clark County (part):
I appreciate the opportunity to introduce A.B. 452. I encountered the concept for this bill while I was campaigning for election. I spoke with a number of my neighbors, constituents, former students, and friends who are not able to vote because they were ex-felons. Simply put, A.B. 452 allows for the restoration of voting rights for all classes of felons once they have been honorably discharged from probation or parole. It also extends the opportunity for ex-felons to petition for the reinstatement of their voting rights in a court of competent jurisdiction rather than in a court of their conviction.

Currently, state law allows for first-time nonviolent offenders to have their voting rights reinstated. All other offenders seeking the right to vote must either obtain a pardon from the Board of Pardon Commissioners or petition for the restoration of civil rights to the court in which they were convicted. Either way, it is a legal battle with a high cost to both the individual and the state. Of the 43,393 ex-felons who would qualify for the reinstatement of their voting rights under these procedures, it is estimated that only 50 ex-felons had been restored. So practically speaking, the voting rights of most ex-felons in Nevada are permanently lost.

Nevada is one of the 14 states that disenfranchised prisoners. At the completion of their sentence, only Alabama, Florida, Ohio, Kentucky, Nebraska, Virginia, Arizona, Delaware, Maryland, Mississippi, Tennessee, Washington, and Wyoming have laws that are just as restrictive, if not more so. In all other states, voting rights are restored either after release from confinement, release from probation, or release from parole. In Maine and Vermont, a person's eligibility to vote is not affected by incarceration. I have provided you with a copy of the National Conference of State Legislatures on the Voting Rights Restoration Process from November, 2001 (Exhibit C). Please note some changes have been made since this was originally produced.

[Assemblyman Munford, continued.] In addition to the national trend towards reinstating voter rights, it is important to acknowledge one of the more sensitive topics related to voter disenfranchisement among ex-felons. Incarceration rates disproportionately affect communities of color. As a result of the racial profiling, differing mandatory sentences, and current conviction rates, African-Americans are incarcerated at a higher rate than other Americans. Between 1985 and 1995, the number of African-Americans incarcerated in state prisons for drug offenses increased by 707 percent. Incarceration of whites rose by 306 percent during the same period. Nationally, African-Americans make up only half of the prison population, yet 12 percent of the total population within the United States. In Nevada, the population of ethnic minorities is 44 percent. Of the total prison population, the statewide percentage of people of color is less than 25 percent. Clearly, as we are restricting ex-felons from having their voting rights reinstated, we are also keeping more communities of color from voting rights as well.

Also included in the bill is a section that addresses employers who ask applicants to identify if they have ever been convicted of a felony. Assembly Bill 452 requires that the application include a statement informing the applicant that he is not required to indicate on the application that he has been convicted of a felony. If he has successfully petitioned a court of competent jurisdiction to seal all records relating to such a conviction, most often this would address men and women who were convicted as minors who had their records sealed as a result. Requirement of this addition would provide education not only for the applicants, but also for the prospective employers. Also in this section is a provision that a box be added for applicants to check if they have been convicted of a felony and to state that the conviction was related to the position for which they are applying.

In conclusion, I would like to return to the overall spirit of this bill. As a government teacher for 36 years in the Clark County School District, I taught that civic engagement was part of the fabric and makeup of this society and what makes this society great. While it is expected as a right, low voter turnout and voter apathy in recent years also has lent credibility to the idea that voting is a responsibility and a proven investment to one’s community. Ex-felons have paid for their crime. We have trusted them to return to society and ask them to contribute to their neighborhoods and communities by obeying laws and finding employment. To continue to deny these individuals their voting rights is not only anti-democratic, it is unjust.

Paul Brown, Southern Nevada Director, Progressive Leadership Alliance in Nevada (PLAN):
I represent the Progressive Leadership Alliance in Nevada (PLAN), which strongly supports A.B. 452. PLAN has been working with ex-offenders for the last couple years since A.B. 55 of the 72nd Legislative Session was passed. We have been registering folks to vote but we have run into some hurdles. Our goal was to register about 200 ex-offenders for last November's elections. We registered nearly 400, and I would like to thank Assemblywoman Chris Giunchigliani for making it possible with A.B. 55 of the 72nd Legislative Session. Not only did she make sure that bill was passed, but she went the extra mile to make sure state and local officials knew about the new law and implemented it. We had a rough going implementing that bill at first.

We continue to register 2 to 4 people a month. They are calling us and we are helping them through the process. There are some problems, and A.B. 452 does address those problems. For example, many ex-offenders meet all the requirements to regain their voting rights except one. They do not have an honorable discharge. Many of the folks that we see have a dishonorable discharge because they could not afford to pay economic restitution. Paying economic restitution is a huge hurdle. As you know, when someone is released from prison in Nevada, they get about $30 in their pocket. It is totally unrealistic. There are other economic hurdles that this bill addresses also for ex-offenders and I'm glad that's in the bill. Assembly Bill 452 removes some economic barriers. It also would allow ex-offenders with dishonorable discharges to vote. Of the 39 states that automatically restore voting rights for ex-offenders, only Nevada requires an honorable discharge. I have submitted a chart of the 39 states (Exhibit D and Exhibit E).

Once again, PLAN urges you strongly to pass A.B. 452, which will allow more ex-offenders to regain their voting rights. If we truly want ex-offenders to fully integrate back into society, we must allow them to participate in the political process.

Chairman Anderson:
I presume you see a benefit in this bill, particularly in the area of being able to go to additional courts other than the court of original jurisdiction. Is that a primary problem in the south with the huge number of people moving into your area?

Paul Brown:
It is a huge problem. As a matter of fact, we were unable to get anyone from the Public Defenders Office or other attorneys to get someone honorable discharge papers through the court process. If you can change that wording

instead of the court of original jurisdiction, we may be able to do that. But it is still a big hurdle going through a court process.

Chairman Anderson:
Could you please clarify for me the restitution part of this statement? I was under the impression that they had a time period in which to complete their restitution. It didn't have to be the day they got out of prison, but they had to make a good faith effort to participate in the restitution process. Are the folks who are zeroed out in time still making restitution, or are they making no attempt at restitution?

Paul Brown:
I don't know the answer to that. As it stands right now, you get a dishonorable discharge if you were unable to complete restitution even if you were attempting to complete it. So you still had the dishonorable discharge and, in effect, you cannot register to vote.

Chairman Anderson:
Maybe we can get some information on the percentage of failed restitutions that fall into this category.

Gary Peck, Executive Director, American Civil Liberties Union of Nevada:
In the interest of saving time, I will simply note that we worked very closely with PLAN and with Assemblywoman Chris Giunchigliani on A.B. 55 of the 72nd Legislative Session. I would simply note that we support Mr. Munford's bill as strongly as we possibly can. There is no more fundamental or important right than voting. This is part, I would hope, of a trend in the interest of helping to facilitate the reentry and reintegration into society of ex-offenders. We strongly support the bill. I couldn't add much to Mr. Brown's eloquent, articulate, and incisive testimony.

Assemblyman Horne:
You mentioned that many of these ex-felons were dishonorably discharged merely because they were unable to pay restitution. I am curious about the timeframe in Section 1, subsection 1, paragraph (c) on page 1 of the bill. It states, "has demonstrated his fitness for honorable discharge but because of economic hardship, verified by a parole and probation officer, has been unable to make restitution as ordered by the court, may be granted an honorable discharge from probation by order of the court." It seems to me, if that is the sole reason for their dishonorable discharge, that they should have been able to petition for an honorable discharge if it was solely because of restitution. Was there another reason why they were not able to make restitution?

Paul Brown:
The reality is on trying to get someone registered to vote. You are on timelines with a cutoff date in October. If you are petitioning courts, you may or may not get the paperwork you need in a timely manner. This is just a huge hurdle. We had a very difficult time just getting the honorable discharge papers from the various agencies. Parole and Probation did a great job. Some of the other agencies weren't as quick. There is a timeliness involved in this. I think if you are asking people to register to vote and then needing them to petition for documents—they are not even sure which court to go to, which was the case last time—it results in a barrier that is impossible to overcome and the person ends up not being registered to vote.

We worked with over 400 ex-offenders and we were not able to register one to vote that had a dishonorable discharge. We have paid staff working on this. It wasn't just volunteers.

Assemblyman Horne:
I guess I need to understand the procedure. Say, for instance, you are an ex-felon and you are currently on parole and it is coming to the end of its term. Parole and Probation is going to discharge you whether it is honorably or dishonorably. You haven't made your restitution. At that time, do they say you are dishonorably discharged, or do you have to say that you can't make restitution because of hardship?

Amy Wright, Chief, Division of Parole and Probation, Nevada Department of Public Safety:
An offender is placed on probation or parole and during the course of their supervision, they were ordered to pay restitution by the court. They had the ability to pay restitution and had the economic means, but actually failed to do so. Then they would be dishonorably discharged from probation or parole because they failed to make the restitution when they had the means to do so. If an offender on probation or parole had to make restitution and because of economic hardship could not make that restitution, they would still be given an honorable discharge from probation or parole. The issue is, if an offender had economic hardship and could not make those payments, we validate that and we would give them an honorable discharge.

Chairman Anderson:
Could you please explain the validation process?

Amy Wright:
During the course of supervision, the offenders provide to officers proof of employment. They also have a sheet for expenses and we verify that. If they

are on Social Security Disability or have medical problems that prevent them from working, or they have families to support, we go through that with the offenders and make adjustments on restitution payments to an area where they can afford them on a monthly basis. We do provide for that.

[Amy Wright, continued.] In the course of restitution, if they complete their probation or parole and they still owe restitution, it then moves over to a civil judgment. Victims then can go through the process to continue collecting restitution from that offender once they are off of community supervision.

Consuelo McCuin, Executive Director, Sista to Sista:
I am currently on parole. I'm a lifer, so this bill doesn't actually affect me. But I'm the Executive Director of Sista to Sista and I work with ex-felons on a daily basis trying to accomplish a reunification of the ex-felon back into the community. By example, I show them that they can live crime free and hold their heads up high. I have brought Joni Kellongh Polk, who has had her civil rights restored. She expressed to me some of the feelings she had in regard to this bill, and I would like her to address that herself.

I work with a lot of ladies coming out of prison, and most of them are HIV (Human Immunodeficiency Virus) infected. That is what Sista to Sista is involved with. We also find the ladies in the community and my church who are ex-felons and are having a very difficult time getting their rights restored. My question to you is, in essence, why isn't the prison record also used in conjunction with the behaviors that they displayed while on probation or parole? A lot of times, the women say they spent ten years in prison. Now I'm out and doing well on parole, but I can't get my rights restored. Is there some way that the prison behavior record could be utilized along with their parole record?

Chairman Anderson:
I don't know the answer to that question, but there are some people here who might know, so we will find out.

Joni Kellongh Polk, Private Citizen, North Las Vegas, Nevada:
I am an ex-felon and have had my civil rights restored. When I got off parole, my parole officer told me he had a surprise for me. It took awhile, but he was able to come back with the paperwork and he explained to me that I would be able to vote, sit on juries, and just be a normal human being again. When that happened, I no longer wanted to commit any more crime because it put me in a status like I had never been to prison before. I was so grateful for that, I didn't get in any more trouble. I just wanted to state that Parole and Probation really wants to help ex-felons as they are coming out.

[Joni Kellongh Polk, continued.] A lot of people can't believe that I'm voting. I am voting because someone helped me, and someone believed in me. It has to be someone who really believes in the individual in order for them to help. I was able to stand on my own two feet. When I got out, my sister had passed away from a massive heart attack and I had her four children and her grandchildren to take care of. It made me feel like I could do this, and I did it. I've been out 20 years now. I'm just so grateful to be out, able to vote, and sit on juries.

Some people really would like to have their civil rights restored and they don't know how to go about doing it. We are in the community and we are trying to help. Someone asked me yesterday, when I told them I was going to be here today, how they could get their civil rights back. Some parolees haven't had any trouble at all, and they would love to go and vote. It makes you feel really good. I know it makes me feel good when I can vote and voice my opinion.

Assemblyman Munford:
My primary motive is to eliminate all the hurdles, hoops, and contingencies that ex-felons had to go through before they received their civil rights, their voting rights, and some of the other rights that are denied them. I don't know if my bill actually went into that in great detail. The real problem seems to be that they still want them to go through this process. When you look at the bill, there are two or three steps that occur over a four-year period and a six-year period. Actually, you don't have your rights restored until after a six-year period has expired. That's a long time. Many of the ex-felons I have spoken with always tell me that they just got too tired. They became so disgusted and lost hope, so they decided not to go through the process. Primarily, my main impetus behind this was the wish that this process could be expedited to get their rights back.

Lucille Lusk, Chairman, Nevada Concerned Citizens:
I have provided an item in writing (Exhibit F) which I will not read, but I would like to make some of those points. The thrust of A.B. 452 is the immediate restoration of the right to vote to ex-felons who were dishonorably discharged from Parole and Probation. There are, of course, some other provisions, including immediate restoration of all civil rights to a person whose crime would be a Category B felony, with force or substantial bodily harm, based on the law in effect on the date of the honorable discharge or pardon.

Nevada Concerned Citizens is opposed to a general restoration of civil rights to persons dishonorably discharged. These persons have not fully paid their debt to the victim or to society, and we feel they should not be rewarded.

The item I have passed out to you in writing states that there may be some specific circumstances which could be deserving of consideration. I know I need

to be careful when I am referencing another bill. But I am using another bill that was introduced as a model and it much tighter defines the granting of restoration of civil rights on a time schedule to those who were dishonorably discharged only because of failure to make restitution to the victim. That bill also needs tightening. The area we would like the Committee to consider, specifically, is to require the person who received the dishonorable discharge, because he or she did not make restitution or received an honorable discharge without paying restitution based on economic hardship. They must show proof that the restitution has been since the discharge before being eligible to receive the restoration of rights.

[Lucille Lusk, continued.] If we truly want ex-offenders to integrate back into society, then they must demonstrate that they have learned from their actions and complete that restitution. Otherwise, we feel that the victim has not been compensated and there has not been a repayment of debt to society. We do feel this could be done after discharge and would be willing to work with that. There are two or three other provisions that are there in writing that we would like the Committee to consider as well.

I would like to say that Nevada Concerned Citizens does, in fact, support allowing the petitioning to courts other than those courts of original jurisdiction, which is included in the bill. We would urge the Committee to find a way to simplify the application process to the courts. It has been an issue that we have discussed many times, and we don't seem to have found a solution. That would be an area we would encourage the Committee to pursue, and we would like to work with you.

Chairman Anderson:
The hearing on A.B. 452 is closed. The bill will be brought back to Committee. There are parts of the bill that we could definitely work with. We may need to take a closer look at the restoration of rights, particularly to the courts, and making application to the court for the restoration of civil rights. I applaud the efforts of Parole and Probation, as exemplified in the statement from Ms. Kellongh Polk. At least part of the system is trying to help these folks reestablish their link with society. Clearly, civil rights are one of those primary links that we are all concerned about if we truly believe that prisons are correctional institutions and we are not stripping them of their full civil rights. People in prison have rights, and when we return them to society, we recognize that also.

Assemblyman Conklin:
Section 8 of this bill talks about application for employment of ex-felons and has some disclosure requirements. I would like to do a little research on my own. Typically, an employer screens for felonies that are work related. For example, if you are hiring a truck driver and somebody has a felony DUI, that's not an appropriate hire for liability purposes. I just want to make sure we are not taking away the ability of an employer to make sound decisions with respect to their own liability to the public and civil liability.

Chairman Anderson:
I have a similar set of concerns on page 11 of Section 8, subsection 1, which is the heart of that section. We will see what can be accomplished in this piece of legislation. The hearing on A.B. 452 is closed.

Let's turn our attention to A.B. 466 and A.B. 468. Let's start with A.B. 466.

Assembly Bill 466: **Revises provisions governing jury trials in justices' courts. (BDR 3-518)**

Nancy Becker, Chief Justice, Supreme Court of Nevada:
The difference between the two bills is A.B. 466 involves justice courts and A.B. 468 involves the district courts. They are two entirely different, separate programs.

Last session, the Legislature increased the jurisdictional limits in justice courts from $7,500 to $10,000 for civil cases. As a part of that, there was some discussion about Alternative Dispute Resolution Programs and what is known as a short-jury trial, which means simply that you use fewer jurors than you would in a case that has a larger amount of money and controversy. Instead of using eight jurors, you would use four jurors with the option on the part of the judge to increase that to six. You would limit the amount of *voir dire*, which is the questioning process for selecting the jury panel. You would limit the amount of pretrial discovery. The purpose for all of that is to process the cases in a more efficient and economic fashion for the litigants. In a $10,000 case, if you mandate that they go to an Alternative Dispute Resolution Program, like you do in district court—arbitration or mediation—then you have a trial *de novo*, and the cost to litigate is going to far exceed the $10,000 recovery cap. So it simply doesn't make much sense to have a mandatory Alternative Dispute Resolution Program in justice courts and then have a trial *de novo* in addition to that. That is the process we use in the district courts because the jurisdiction is greater in the district courts.

[Chief Justice Becker, continued.] The Legislature indicated that the Alternative Dispute Resolution Program in justice courts is not mandatory. It is discretionary. So if you want to go to arbitration, or you want to go to mediation, that's fine. If you can resolve your claim, that's okay. You have made the conscious choice to do that before actually having a trial. It mandated short-jury trials in justice courts so you wouldn't have the longer jury trial expenses, and both the plaintiff bar and the defense bar were very comfortable with that. Everybody wanted to keep the process where we could still have four people who are average citizens making the decision on some of these cases. They didn't see a need for the extensive discovery in those kinds of procedures. They weren't traditionally allowed in justice court anyway by the justice court rules.

The problem is that in defining what a mandatory, short trial is, it was referred back to the district court definition. In district court, it is part of alternative dispute resolution. So, in effect, what happened was you could do arbitration or mediation. That is discretionary. You must do a short-trial program, but by definition, a short-trial program is not binding upon anyone. Then you could have a trial *de novo* out of that and have a larger jury trial if you are entitled to one, or a bench trial in the justice court. So, in effect, because the definition of short trial referred back to the district court definition, the statute was confusing and ambiguous. I think what your intent was that if you want to do alternative dispute resolution in justice court, that is entirely discretionary. If not, you go right to a bench trial or a short-jury trial. It keeps the costs down and helps the litigants, both plaintiff and defense.

That is how the system should work, not whether you could do arbitration or mediation. You had to do a short trial, but that wasn't binding on anyone. If you wanted a trial *de novo*, you had a bench trial or another jury trial, which again runs up the costs for the litigants. In doing so, when the judicial council looked at the rules for January 1, 2005, the bill directed the Supreme Court to create the rules for the short-trial program in justice courts. We realized there was a problem with the statute.

This bill just addresses the problem. It simply says, "all jury trials in justice courts." It corrects the problem of all cases in which you would have the right to a jury trial in justice courts or a short-jury trial process. It also corrects some ancillary statutes with regard to the number of minimum jurors in justice court jury trials. It deals solely with the justice court. It has nothing to do with the district court short-trial program or any of the other alternative dispute resolution programs in district court.

Jack Schroeder, Justice of the Peace, Reno Justice Court:
Justice Becker has articulated the process effect of this bill and how it will have a profound effect on saving money for the litigants and efficiency in running the system, in making sure justice is addressed promptly and speedily in justice court.

Chairman Anderson:
We are going from 8 to 6 jurors?

Judge Schroeder:
It could be 6 but not less than 4.

Chairman Anderson:
Why would we want to make a 4-member jury?

Judge Schroeder:
Members of the community are hopefully willing to be on a jury. This would make a lesser number of people to serve. Three of the four would be a majority vote. It provides for efficiency. You have a one-day trial, if not a half-day trial. You're just trying to make sure the litigants are given justice in that manner.

Chief Justice Becker:
The committee was composed of lawyers who represent defendants and lawyers who represent plaintiffs. Their concern wasn't the 3 of the 4. Their true concern was that a 7- or 8-person jury, a full *voir dire* and all of those procedures. What happens is that a $10,000 case could take 3 to 5 days to try if you go through the entire process, instead of 1 or 2 days, depending upon the number of witnesses you have. These are very small cases.

These are cases that don't warrant that kind of time on the part of a businessman, a defendant, or plaintiff in an automobile accident. The fact that you need a majority of the jury, which in the case of 4 would be 3 of the 4, is less important to them than the opportunity to present to a jury what happened. For example, I was driving my car, I was stopped at a red light, and someone rear-ended me. The damage to my car is $500. Because I have a pre-existing condition, I also had some injuries as a result of that impact. Here are my medical bills, and here is what happened to my life. The members of the jury would decide, and people are comfortable with that. I appreciate the concern, but I think the people who do this for a living every day did not have that concern.

Chairman Anderson:
Currently, the justice court has the opportunity to have a 4-member jury. Statutorily, it says 8 to 4 jurors.

Judge Schroeder:
I don't know, as I've only had one jury trial.

Chairman Anderson:
What is the advantage of moving from 8 to 4 jurors, to 6 to 4 jurors? Why are we concerned about the top end of the jury when you can currently have a 4-member jury if you wish?

Chief Justice Becker:
The current statute provides for an 8-person jury unless people stipulate to less than that. So this would turn it around the other way. It would be a 4-person jury, unless the judge granted a 6-person jury.

Chairman Anderson:
Not more than 6 or less than 4? The people don't get to choose?

Chief Justice Becker:
Correct, but as I said, when you look at it from the standpoint of spending a year looking at the rules and the way justice courts operate, that was not an issue that gives angst to the attorney representing the litigants. They felt that it would lessen the costs and allow them the ability to do that rather than have them go through the process of stipulating in every single case. They felt the default position should be 4, then go to 6 jurors.

Assemblyman Carpenter:
Can you explain to me on page 3, line 19 of the bill where it says this section does not apply to the following actions and proceedings? Then it goes on to say, "when damages claimed do not exceed $10,000 or when no damages are claimed." I thought this was for small actions.

Chief Justice Becker:
This language was part of the existing statute. When you expanded the $10,000 and implemented the mandatory short trial program in the previous legislative session, there were certain types of cases that were exempted. I think it was because they are generally cases in which the plaintiff would not have a right to a jury trial, and you wanted to spell that out. I can't tell you who came up with the list. I imagine it was counsel working in a work session with the Committee last time.

[Chief Justice Becker, continued.] Equitable actions such as injunctive relief, evictions, and things of that nature at common law did not have a right to a jury trial. Therefore, at the time our *Constitution* was initiated, you didn't have the right to a jury trial. I suspect that was part of what was being talked about here. The list of exemptions was the list that this Committee came up with last time. The minutes don't reflect why landlord/tenant actions were left out of the issue. That would be pure speculation on my part.

Chairman Anderson:
In your discussions about this particular section of the law concerning the short jury trial, apparently the court had taken this up during legislative session.

Chief Justice Becker:
That is correct.

Chairman Anderson:
Didn't this issue come up?

Chief Justice Becker:
As to the exemptions?

Chairman Anderson:
Yes.

Chief Justice Becker:
We accepted the Legislature's policy decision that this should be exempted. Some of them would not qualify for a jury trial by constitutional law in the first place, for example, protective orders and small claims. The procedures in small claims would not include a jury trial. You might have a right to have it transferred and treated as a civil action, which is a different type of procedure in justice courts. Under the constitution, that's an issue that is currently being litigated before us, so I am unable to comment further.

I think most of these exemptions simply did not have a right to a jury trial in common law, so I think that is probably why they were placed there. We became involved with it because the jump from $7,500 to $10,000 in statute provided that the law would go into effect January 1, 2005, and at that point in time, the Supreme Court was to have rules in place for how to conduct the short-trial programs. That was the short-trial program that was contemplated when the Legislature mandated it in the last session.

Judge Schroeder:
Practical experience would be in a landlord/tenant matter. The tenant would possibly try to manipulate the matter to a jury trial and, therefore, the lockout would not be applicable with prompt procedure which, generally in summary proceedings, is what the landlord seeks. Conversion to a jury trial would delay it for months.

Allison Combs, Committee Policy Analyst:
I'm afraid I can't offer much. The amendment was added in the Senate. Looking at the documentation from the exhibits as well as the minutes from the hearing, there aren't any references to exemptions from the short-trial program. I'm afraid I don't have anything to offer from the history of the legislation.

Chairman Anderson:
Mr. Carpenter, let's see if we can do some further exploration in this area to make sure how they determined this, and who determined what was on this list and what was not.

Assemblyman Carpenter:
I think I remember some of these. Not having a jury trial for something less than $10,000 concerns me. Some of the other ones I can understand, but with that one, I have a problem.

Chairman Anderson:
With the dollar figure moved forward, I don't believe jury trials were allowed at all in justice court.

Chief Justice Becker:
Prior to the Supreme Court's decision last year, no one knew whether or not the *Constitution* required the jury trial in justice courts, or at what monetary amount. That matter was litigated in front of us. We researched the history of the *Nevada Constitution* and what we discovered was that the founders' intent spoke about civil actions where you had a right to a jury trial at the time the *Constitution* was enacted. This would basically be contract actions and negligence actions, and you would have a right to a jury trial regardless of the amount of controversy. That is, it didn't matter how much money you were suing for, because you were entitled to a jury trial. In fact, that is what was happening in territorial Nevada at the time the *Constitution* was enacted. The founders discussed whether they should put monetary limits; they decided not to put monetary limits on civil trials. So if you were entitled in 1864 to have a jury trial in a cause of action, the amount of money didn't matter.

[Chief Justice Becker, continued.] In equity actions you never had a right to a jury trial in the history of the United States. Some landlord and tenant actions are equity, such as whether you can remain on the property. With regard to other parts of landlord and tenant actions, such as the damages, it doesn't say whether you get a jury trial or not. What it says is if you are entitled to a jury trial in this particular landlord/tenant action, it would be a full-jury trial, not a short trial. I hope that answers the question under Section 2, subsection 2(a) and (b). So it doesn't say you won't get one. What it says is if you get one under the *Constitution*, it will be a full-jury trial for those causes of actions. For the others, you wouldn't be entitled to one anyway, under the *Constitution*.

All of that language is what is in the current statute now. Under *Nevada Revised Statutes* 38.257, the repealed section, we just took it word for word and transferred it to a different section because it was our belief that you didn't intend for this to be a mandatory alternative dispute resolution program. You intended it to be the way jury trials would be conducted in these courts, with the one exception of the landlord/tenant. I'm not certain of the intent there.

Chairman Anderson:
The hearing on A.B. 466 is closed. We will hold A.B. 466 to get the answer to part of the questions raised by Mr. Carpenter. It's my hope we will then send it to the work session. Let's turn our attention to A.B. 468.

Assembly Bill 468: Makes various changes to provisions regarding arbitration and other alternative methods of resolving disputes in certain civil actions. (BDR 2-523)

Nancy Saitta, District Judge, Eighth Judicial District Court of Nevada:
I would like Mr. [Chris] Beecroft to take the lead on this, as he is the Alternative Dispute Resolution Commissioner in our court, and he will present the important points on this bill.

Chris Beecroft, Alternative Dispute Resolution Commission, Eighth Judicial District Court of Nevada:
I have prepared a brief presentation for A.B. 468. In 1991, the Legislature authorized the initiation of Alternative Dispute Resolution (ADR) Programs through S.B. 366 of the 66th Legislative Session in an effort to provide timely resolution and justice to civil matters with a lesser monetary value. Although early discussion mentioned $50,000 as the proper monetary threshold for these programs, the Legislature wanted to ensure that this type of litigation would be successful, good for our citizens, and not be an overloaded program to begin

with. Thus, it decided upon an experimental program threshold of $25,000. After witnessing the program's success at the threshold of $25,000, in 1995 the Legislature agreed to increase that threshold to $40,000. The ADR Program continues to be successful. In 2004, the Clark County ADR Program opened and assigned 3,660 cases. Our statistics show that 78 percent of cases that are assigned to the program are resolved within a 12-month period of time. Most importantly, however, less than 2 percent of the remaining cases ever end up in trial. I believe these results are outstanding and I commend you for authorizing these forms of Alternative Dispute Resolution Programs.

[Chris Beecroft, continued.] We come before you today with A.B. 468 to do a couple things. First, A.B. 468 cleans up various elements of ADR language, such as the name change itself, the types of exemptions allowed in arbitration, the numbers of jurors in short trials, and codifying language from Supreme Court rules recently adopted. Second, A.B. 468 increases the monetary threshold from $40,000 to $50,000 to provide the Alternative Dispute Resolution Program with what we believe is a good monetary threshold for a greater number of litigants. We expect the number of cases in the ADR Programs to increase approximately by 1,000, and remind you that operational expenses required to manage this increase have already been requested in S.B. 177.

I believe the matters discussed in this bill represent another excellent advance in district courts' strategic attempts to provide timely access to justice. I am very proud of those current programs.

Chairman Anderson:
First is the name change to Programs for Arbitration for Alternative Dispute Resolution. Is it your understanding that this is a commonly used term that has been in use either in the Second and Eighth Judicial District Courts, or only in the Eighth Judicial District Court?

Chris Beecroft:
It is my understanding that it is primarily used in the Eighth Judicial District Court. I am not really certain how they characterize it in the Second Judicial District Court. Mediation has been adopted by the Supreme Court as another form of Alternative Dispute Resolution. I have spoken to my counterpart, Wesley Ayers, who is the Arbitration Discovery Commissioner for the Second Judicial District Court. He is in complete agreement with this bill.

Chairman Anderson:
What is the net effect of moving the dollar value from $40,000 to $50,000? Why not the lower figure?

Chris Beecroft:
Because, our courts are so clogged. This is another opportunity for cases of what we consider lesser value—not unimportant cases because they are extremely important to the litigants, but cases of lesser monetary value. Cases of lesser monetary value flow into a program that has already demonstrated incredibly great success at resolving these kinds of cases. As I indicated in my opinion, the number of cases will increase from approximately 4,000 up to 5,000 cases per year that will flow through the ADR Program. Again, at a 70 percent resolution, we anticipate great success as well.

Chairman Anderson:
Will this increase the burden on the justice court in any fashion? Jurisdictionally, we are not going to break that barrier?

Chris Beecroft:
No.

Chairman Anderson:
I want to make sure because we had quite a contentious discussion last time regarding that particular question.

Assemblyman Carpenter:
I have a question on page three, lines 26 through 28. It states, "As used in this section, 'short trial' means a trial that is conducted, with the consent of the parties to the action or in conformance with rules adopted by the Supreme Court." Does that mean that the judge can make you have a short trial even if the parties don't agree to it?

Chris Beecroft:
That is not my understanding. The reason the language was drafted rather vaguely for this particular portion of the bill was at the time the language was drafted, none of us were certain how the Supreme Court was going to alter its Supreme Court rules to accommodate what would happen in the event of an unresolved arbitration case or an unresolved mediation case. The intent here was to leave it so that these cases could enter the short trial program in conformance with rules adopted by the Supreme Court. As it turned out, the Supreme Court's new rules, adopted December 22, 2004 and amended on March 25, 2005, provide that the unresolved cases from arbitration and mediation shall enter the short-trial program subject to the litigant's unfettered, unconditional right to timely file and demand that the case be removed from the mandatory short-trial program.

Chairman Anderson:
The short-trial program remains one of those questionable things that we all will continue to discover.

Assemblyman Carpenter:
I just think it needs to be clarified. To me, it is very unclear why they put that language in there.

Chairman Anderson:
We'll have Ms. Combs take a look at it. Why is there an increase on page 5, line 45, to go from 6-person jury to an 8-person jury? We were discussing a decrease, so why is there also an increase? Will a short-trial jury be decreased to 6 jurors?

Chris Beecroft:
There was discussion during the committee that promulgated the rules that were submitted to the Supreme Court. During those discussions, members from the insurance industry requested that we consider the possibility of permitting 8-person juries, even in the short-trial program. The committee agreed and submitted to the Supreme Court the opportunity for litigants to request, upon good cause shown, the ability to have an 8-person jury to the *pro tem* judge, or the district court judge conducting the case.

It should say that this goes along the lines with the Chief Justice of the Supreme Court regarding the number of jurors.

Chairman Anderson:
It sounds like she was advocating for a smaller number rather than a larger number in her presentation, or a jury range rather than a flat number.

Nancy Saitta, District Judge, Eighth Judicial District Court of Nevada:
You made a comment about the use of the term "alternative dispute resolution" and whether or not it was being used in the Second Judicial District Court. As this bill was written, it is primarily drafted to bring us in compliance with more nationally recognized uses of terms. ADR is actually a genre of cases at the national level. The only distinction between the Eighth Judicial District Court and the Second Judicial District Court is the commissioner in the Second Judicial District Court has additional responsibilities that our ADR Commissioner does not. The only difference is that he shares obligations for a discovery commissioner as well. But, indeed, the Second Judicial District Court is in favor of this change.

[Judge Saitta, continued.] Similarly, the short-trial program is a very separate and distinct program in the courthouse. It has jurisdictional amounts and different requirements that will allow someone to come into that program. It is something that goes through the ADR Commissioner.

Similarly, the number of jurors again deals with the jurisdictional distinction between the lower courts and the justice courts, to what we refer to as lesser jurisdictional dollar amounts as opposed to those cases that come through ADR and/or the short-trial program that have a greater jurisdictional amount. The only difference is when you are in a higher monetarily described jurisdictional level and you have to show a higher amount of damages to the district court. It is believed because of that distinction that there should be more jurors. It is just as simple as that.

Chairman Anderson:
I guess we are partially abrogating our responsibility to the Supreme Court to determine what will or will not be acceptable for short trial juries.

Judge Saitta:
As you know through Supreme Court rule, the only other significant bit of information to add to the request for the change for A.B. 468 has to do with the reality of allowing the $10,000 jurisdictional change, which makes a significant impact upon the number of cases that come into the district court. So again, it is an attempt to keep that program meaningful and operational, and to allow people their immediate access to court. But at the same time, it is an alternative way to have cases resolved, and keeps them out of the district court which is a much longer, more arduous process.

Chairman Anderson:
So it is going to be one of those continuing questions of inflation?

Judge Saitta:
Clearly, it is going to be a continuing debate, and inflation is going to affect it. Right now, we believe that those 1,000 cases or more that Commissioner Beecroft indicates will be added to his caseload will still have a significant effect on our caseload.

Assemblyman Carpenter:
On page 6, Section 5, subsection 2, it says "The Supreme Court may adopt rules which provide that if a party requests a trial following nonbinding arbitration or mediation pursuant to rules adopted by the Supreme Court the action must be submitted to the short trial program." I guess that is an advantage to the parties to go to the short trial.

Judge Saitta:
I would certainly consider it to be an advantage over the district court process. I do want to correct one thing. The language is nonbinding, and there is a big difference between binding and nonbinding. Nonbinding is the actual basis upon which they get to continue to go forward, i.e. the short-trial program. I think that is the reason the Supreme Court remains permissive as this process continues and evolves. There may be a need for them to yet again make rules to control, or otherwise confine, the program.

Chairman Anderson:
We are going to end up having to go with the trailer bill relative to A.B. 466. Of course, it wouldn't be surprising if A.B. 466 passes because part of the resolution is in here. Mr. Carpenter, did you want to look at this awhile longer?

Assemblyman Carpenter:
I think that if Legal can come up with the question I had on page 3, that would be fine with me.

Chairman Anderson:
Why don't we see if we can get A.B. 466 and A.B. 468 together in our work session and deal with them there? The hearing on A.B. 468 is closed. The next bill will be Assembly Bill 390.

Assembly Bill 390: **Increases distance required under certain circumstances between proposed gaming establishment and public school, private school or structure used primarily for religious services or worship. (BDR 41-811)**

Assemblyman Richard Perkins, Assembly District No. 23, Clark County (part):
It has been almost a decade since this Body passed the Neighborhood Gaming Law for Clark County. It is my belief that it is time to revisit the issue. Growth in Nevada has since been, as we all know, very extraordinary. We still have somewhere in the magnitude of 30,000 to 50,000 developable acres within the boundaries of that valley. This area will have a number of land uses, whether it is gaming, residential, industrial, commercial, and the like.

As we begin to build out the valley, I believe that we need to ensure that the coexistence of these various land uses will be done in a fashion such that our quality of life continues to be one in which we will be proud.

[Assemblyman Perkins, continued.] The bill simply lengthens the distances between neighborhood gaming establishments and residences, schools, and places of religious worship. The bill also addresses how a governing body can vote on these issues. As you may recall, not long ago the Clark County Commission took up the issue of a neighborhood gaming establishment. There were various conflicts which resulted in having to abstain from voting, and created a difficult situation in terms of that vote. So there is a provision here that also addresses those various conflicts.

On page 2 of the bill, the 2,500 foot distance is changed to 5,000 feet. On page 3 of the bill, 500 feet is changed to 5,000 feet, and 2,500 feet is changed to 7,500 feet. The portion that addresses the governing body and their voting pattern is on page 3 as well, starting on line 27. The only other change is a reference on page 5 to NRS 463.

Is the Neighborhood Gaming Law for Clark County still working? That is the fundamental question for this Committee. And as we continue to grow in the Las Vegas Valley, do the distances need to be extended? There is an entitled piece of property for a gaming establishment. Certainly, you don't build them out in the middle of nowhere. You wait until there is a market to support it. As the neighborhoods grew towards the piece of property and the gaming establishment was built, there was a school 1,500 feet away. It met the requirement, but there was a great outcry by the public about why that school was so close to a gaming establishment. It met the criteria, but the residents there were concerned. That's just one of many stories, and I'm sure there are others. In essence, that is the purpose for me bringing A.B. 390.

Chairman Anderson:
I know this is an issue of contention. I generally have been under the impression that the requirement had been working fairly well in the south. There is always a chance for an improvement when it is necessary. We are concerned about whether the distances are realistic or not and the proposed large increase in distances.

Assemblyman Perkins:
Five thousand feet is not that far. It is only a mile. I think if you were to ask the residents relative to the distance between their residences, a school, or a place of worship, and a gaming property, 5,000 feet would probably be too close for them. We know we have to coexist. I was born and raised in this state and have grown up around gaming. It is something I am familiar with, and something I am comfortable with. Not everybody is as comfortable as I am, however. I just want to make sure the quality of life that we enjoy in southern Nevada continues to be that way.

Roy Adams, Private Citizen, representing Spanish Springs Residents, Sparks, Nevada:
[Submitted Exhibit G and Exhibit H.] We oppose casino development in Spanish Springs Valley. Spanish Springs is the valley north of Sparks proper. There have been a number of neighborhood casino developments proposed in the area. Currently, it is a very hot issue in the area.

Chairman Anderson:
This may be more applicable to a bill that we are hearing on Friday than the bill we are hearing today.

Roy Adams:
When I decided to come before you to speak, I took some pictures from my roof (Exhibit G, pages 11 through 14). This is my neighborhood in Spanish Springs. You can see the Pyramid Highway which is the border between unincorporated Washoe County and the City of Sparks. The proposed casino on the Tierra Del Sol property is adjacent to my neighborhood. The approximate distance from the proposed casino to where I live is about 250 yards. This neighborhood is about 10 to 14 years old. The houses in this area are just being built, many of them are not yet occupied, and they will be directly adjacent to the casino property. The terrain just beyond the road of the Pyramid Highway is part of the Tierra Del Sol property, so there will be houses so close to the casino that they will have casino light all night long.

There are other issues as well. Within 300 yards of the proposed casino development in Tierra Del Sol, we have a regional park that Washoe County built in recent years. Also, there is a regional library that is not yet opened. The park includes a skate park, children's playground, and a meeting area where they hold classes, et cetera.

My point is in relation to A.B. 390. We would like to see the same distances applied to Washoe County and northern Nevada as well. We are wondering if the bill's population stipulation of 400,000 could be modified to include Washoe County.

In this neighborhood we have several disenfranchised residents who have no voice in the City of Sparks. To have a casino placed within a few hundred yards of homes and a park struck me, initially, as abusive. We would like to have a voice in this and casino development discussed as a regional issue. Currently, that is not what is going on. Assembly Bill 390 also talks about the process by which legislators and councilmen vote on this. I would like to see the issue of this boundary discussed as well.

Chairman Anderson:
This probably fits closer to the bill we will be hearing on Friday, April 8, 2005, which deals with the possibility of setting these regulations over to Washoe County, in addition to Clark County, where these rules currently apply.

Assemblyman Mortenson:
In relationship to this bill, I would like to ask Legal, if a casino owns property which currently is at a smaller distance than 5,000 feet from a residence, will they be grandfathered in so they can build a casino regardless of the fact that they don't meet the qualifications in this bill?

Chairman Anderson:
We will research it, but the bill does not contain a grandfather clause. Since this bill pertains to Clark County, the issue would mean that if somebody is currently holding property and is currently developing it, apparently the owner would be able to continue the development.

Roy Adams:
In the Washoe County case, the casino property is not zoned for gaming and the entitlement is a transfer of a gaming license from the City of Reno. It was never zoned in the master plan for commercial tourism.

Assemblyman Mortenson:
I would like to know from Legal whether or not existing land, owned by various casinos that have not been zoned or constructed, would be grandfathered in or apply to the dimensions of this bill.

Chairman Anderson:
We will have Ms. Yeckley get that information for you.

Shirley Bertschinger, Private Citizen, representing Mesa Meadows Property Owners, Sparks, Nevada:
[Submitted Exhibit I.] I thought this bill applied to the whole state, not just Clark County. I do support this bill and extending the limitations to Washoe County.

Chairman Anderson:
It only applies to Clark County, as it is the only entity in the state that has these kinds of regulations in place.

Lynn Chapman, State Vice President, Nevada Eagle Forum:
We are in support of this bill. We spent a lot of time and money telling our children how dangerous it is to smoke. We spend lots of time and money telling and showing our children how drinking and driving is so dangerous. Then we

build casinos where adults do these things, and where they provide silliness and craziness. I don't think we are sending the right message if we do this. So if we have casinos built far enough away, the children would not be around the smoking, the drinking, the silliness, and things that go on at casinos. I think that is a better idea, so we are in support of this bill.

Carolyn Edwards, Member, Neighborhood Casino Committee, Las Vegas, Nevada:

[Submitted Exhibit J.] I am a member of the Neighborhood Casino Committee that was recently established in Clark County by the Clark County Commission. I am active in school and zoning issues in Clark County and have worked with residents to address concerns about neighborhood casinos. I support the goal of A.B. 390 to prohibit the casinos from being located near schools and residential areas.

Unfortunately, A.B. 390 will not achieve this goal because it does not address the critical weaknesses of the existing law, namely S.B. Bill 208 of the 69th Legislative Session. This is a situation that affects all of Nevada, and I understand that there is a bill currently under consideration that will address some of these issues in Washoe County. I am hoping that Washoe County will be able to take advantage of learning from the mistakes that we have experienced in Clark County.

When the Legislature passed S.B. 208 of the 69th Legislative Session, the law permitted casinos within 1,500 feet of a school and 500 feet from a residential area. However, the law was riddled with exemptions and loopholes that undermined those requirements. I have passed out some charts and maps. As a result of S.B. 208 of the 69th Legislative Session, in the Las Vegas Valley there are at least 5 large, undeveloped casino sites that are located within 1,500 feet of a school. Thirteen large sites exist within 500 feet of a residential area. All of these sites are either exempt under S.B. 208 of the 69th Legislative Session or take advantage of some of the loopholes in the law. When these 17 sites are developed, we will have an unprecedented expansion of casinos near schools and residential areas. Unfortunately, A.B. 390 does not address any of those sites.

I can't tell you how frustrated residents and parents are when they learn a casino is going to be built next to their school or homes, and they are told there is nothing they can do about it because the site is exempt under S.B. 208 of the 69th Legislative Session. The very law that is supposed to protect children and homeowners is actually facilitating expansion of casinos near homes and schools. Just last week, as a member of the Clark County Neighborhood Casino Committee, I was told by the planning staff that there was nothing we could do

about all the future sites in Clark County because of the exemption in S.B. 208 of the 69th Legislative Session. The committee began by asking the question, "Why are we here if there is nothing we can do about these particular sites?"

[Carolyn Edwards, continued.] If our goal is to limit casinos near schools and homes, then we really need to address the limitations of S.B. 208 of the 69th Legislative Session. Assembly Bill 390 does not do that and will not meaningfully limit casinos near schools and residential areas in Clark County. If this Committee decides to act on this bill, I would urge that the members consider amending the bill so that it achieves the goal prohibiting all casinos near schools and homes.

As a final comment, A.B. 390 should authorize a study if Washoe County should adopt provisions similar to S.B. 208 of the 69th Legislative Session. I would urge this Committee to ensure that the advisory group carefully examines the flaws of S.B. 208 of the 69th Legislative Session so that they are not repeated in northern Nevada.

Assemblyman Conklin:
A lot of these sites are in areas that are relatively newly developed. I am curious whether you know if these sites were zoned prior to the construction of schools and homes within the prescribed distances. If the sites were zoned, then my next question would obviously be was that information disclosed at the time of purchase to the properties or zoning of additional schools within that area?

Carolyn Edwards:
As I understand it, a lot of these sites were previously zoned, but they are not gaming entitled. While they may have the zoning, they don't have the gaming. The zoning may be the entitlement, but the gaming is a privilege. So there is still that ability to address the issue. The fact is, part of the problem with S.B. 208 of the 69th Legislative Session is that sites get picked and zoned far ahead of the residences and schools that come in. They wait for the development to come so there will be business for their activities. I understand that. The problem is those residences and schools get built and you can't do anything about the gaming. I think, in circumstances like that, there should be some provision to allow the deciding bodies to say that there has been a change in circumstances and we need to revisit this.

If there was a time limit on the approvals, or if there was a requirement to revisit, the fact is it is very easy to go out and buy land that has nothing around it. There is no notification required at that time because there is nobody around them. The 1,500 feet does nothing because there are no homeowners and no

schools, so notification doesn't happen. When they come in to buy, are they noticed? Of course, they are supposed to be within a certain distance.

[Carolyn Edwards, continued.] What I have experienced with the battles I have been involved in is that a lot of people are not told the scope of the projects. So, frequently, they will be told there will be a neighborhood casino. There is no definition of a neighborhood casino in Clark County, so it is a misnomer, because under the statute there is no definition for neighborhood casino. Then what you have is people thinking a neighborhood casino will be okay, because they are thinking it will be a small casino. Then a casino comes in with 1,000 rooms and 2,500 feet of gaming space. It is a resort destination, not a neighborhood casino, in the minds of the residents.

Michael G. Alonso, Legislative Advocate, representing Harrah's Entertainment Inc., Reno, Nevada:
[Submitted Exhibit K.] Harrah's supports A.B. 390 if we can add an amendment to it. On page 1 (Exhibit K) is the proposed language of the amendment to this bill, and on page 2 is a Clark County map. The site that is bordered in black is what the amendment proposes. It excludes from coverage of A.B. 390 the extended distance requirements. That piece of property is in black. The property in blue is currently the Rio Hotel and Casino site in Las Vegas. The property that is bordered by green is property that Harrah's also owns. It is important to note that the both the Rio site and the property that is bordered by green already have been zoned for a gaming enterprise district under local ordinances and under state laws. The property in red is additional property that the Rio owns, but is not zoned for a gaming enterprise.

What we are trying to do for future development is protect this site from having to meet the longer distance requirements, if we decide to expand or build a separate casino. This property that is not in the gaming enterprise district is 1,500 feet from residences. So if you expanded this to 5,000 feet, then the property that is bordered in red would come within that distance requirement. That is all we are trying to do. We have approached the sponsor of this bill, spoken with him, and he didn't seem to have a problem with the proposed amendment.

Assemblywoman Ohrenschall:
Can you repeat your explanation starting with exactly what the properties you are interested in, and the reasons for it?

Michael Alonso:
If you look at the center of the map, where it is all a pink color, that area is all gaming enterprise now and has H-1 zoning. This zoning allows for hotels and casinos. You can see the Mirage, Caesar's Palace, the Bellagio, and the Palms on the left-hand side. The site that is bordered in black is what we are trying to exempt from the bill. If you go inside the black border, the blue border is currently the Rio Hotel and Casino. The green border is property that Harrah's owns and is adjacent to the Rio, which is already zoned for a gaming enterprise district. The red border is property the company currently owns which is not in the enterprise district, but could apply for it at some time. We are trying to exempt that whole area.

Assemblywoman Ohrenschall:
So this whole area is property that Harrah's has an interest in?

Michael Alonso:
Correct, except for the left hand corner inside the black border that is in blue. That is not owned by Harrah's currently.

Assemblywoman Ohrenschall:
Who owns it?

Michael Alonso:
I don't know.

Anna Maria Serra-Radford, Private Citizen, Las Vegas, Nevada:
I have four children living in southwest Clark County. I have two high school students, one in junior high school and one in elementary. I live fairly close to an area that has been proposed for a casino. I have been here since January 1999, and have been very involved in the zoning aspects and quality of life of the neighborhood in relationship to neighborhood casinos. I support the goals of A.B. 390 for a lot of reasons. I do believe 5,000 feet is reasonable in keeping the distance between our homes, schools, and churches. I would like to see that extended to even parks and child care facilities. The problem with A.B. 390, in my mind, is that even though I support the goals, there are still a tremendous number of loopholes in the current bill of S.B. 208 of the 69th Legislative Session that is allowing certain properties to be built too close to schools and homes.

It is a very unique situation here in Clark County. I find that in the 5 or 6 years we have been working together with neighborhoods—making grassroot efforts to try and eliminate or reduce the sizes of neighborhood casinos—the frustration is that the people have such a small voice. Even with groups of hundreds and

thousands with petition signatures, and groups getting together to voice their concerns regarding the issues of quality of life and the safety of our children, we don't feel we are being validated by those concerns.

[Anna Maria Serra-Radford, continued.] Recently I participated in a conversation about the neighborhood casino issues based on a fight we had with the Durango Station Casino on Highway 215. It is within 1,500 feet of an elementary school. It is disturbing when you stand at the property line and you see how close the casino would be. There is also a high school and a very heavy residential area around this property. I was told by someone that if you live in Nevada you need to brush off the concern, as Nevada is about gaming and casinos and that is what you have to deal with.

Many of my friends and I did not move here because of gaming. We moved here because we were looking for a better quality of life and felt this state could provide that for us. To some extent, we feel a little shortchanged. I believe that gaming and neighborhoods can coincide, but everything has its place. We seem to forget that the growing number of citizens here in Nevada includes children. When you think that over 250,000 of them are children, we are not doing enough to protect them and to ensure them the safety, education, and quality of life that they deserve.

Chairman Anderson:
Are you working with Ms. Carolyn Edwards on her proposed amendments?

Anna Maria Serra-Radford:
I am not sitting on the same committee that she is, but we have worked together.

Chairman Anderson:
The reason I ask is that she has a specific proposal, as you may realize from her handout. This bill would not affect most of the things that you are talking about. In fact, it wouldn't change the status at all. What it would do is preclude things moving in the future that would be expanded. That is the reason I am trying to ascertain whether you were aware of her proposal.

Anna Maria Serra-Radford:
To answer your question more directly, yes, I agree with Ms. Edwards on the goals of A.B. 390, but obviously there has to be amendments to help resolve the issues of all these loopholes that S.B. 208 of the 69th Legislative Session has.

Blake Cumbers, Vice President, Boyd Gaming Corporation, Las Vegas, Nevada:
I am here today to voice a strong opposition to A.B. 390. As a result of our recent merger, Boyd Gaming now employs approximately 12,500 in southern Nevada. We are proud to be a major player in both the tourist and the local gaming markets. We are also proud of the contribution we have made to our community and the state by operating 11, and soon-to-be 12, successful facilities in the Las Vegas area.

We have a responsibility to our shareholders, our employees, and our community to take advantage of opportunities that allow us to grow and enhance our position in our industry. As long as they are reasonable and appropriate, we believe that we should be entitled to pursue such new projects. We are all well aware that we are not new to the development and operation of quality neighborhood casinos. We operate the Orleans, the Sun Coast, and Sam's Town, which have all been well-received assets in their communities and adjacent neighborhoods for years.

The language before you in A.B. 390 extends the distance requirements between residences, churches, and schools as established in S.B. 208 of the 69th Legislative Session. That's at 500 and 1,500 feet, to 5,000 feet, almost a mile. This ensures that no new sites can be built in the Las Vegas Valley. Due to the requirements that are already inherent in S.B. 208 of the 69th Legislative Session, it would be virtually impossible to create any new site in the valley. This is what this bill is about. It has nothing to do with preexisting sites that were approved by the planning commissions, the respective city councils, and the political process that is normal to this type of pursuit.

I follow these issues very closely and I am not aware of any new parcel that would meet the requirements under this new legislation. So to go forward with this legislation would create an unfair playing field. There have been perhaps a dozen cases since S.B. 208 of the 69th Legislative Session was enacted. Not a single gaming enterprise district has been approved, and not one has survived appeals and neighborhood opposition to such a project. The system has worked, and it has worked time and time again. There is really no compelling reason to fix something that isn't broken. The only controversies that have arisen have dealt with the design and scale, but not the location of the facility. This bill does nothing to address that ongoing concern.

We agree with the intent of S.B. 208 of the 69th Legislative Session. We are willing to work within it, and agree there are areas where casinos are not appropriate. But with proper planning through the proper process, projects can be very beneficial. They provide jobs and revenues for local and state government and alleviate air quality and traffic concerns by placing

entertainment amenities closer to where people live. These amenities frequently include restaurants, movie theatres, bowling alleys, and showrooms, all under one roof.

[Blake Cumbers, continued.] With the incredible rate of growth in Las Vegas Valley, the opportunities under S.B. 208 of the 69th Legislative Session alone have become extremely limited. There are only 4 or 5 undeveloped sites that we are aware of in Clark County, all of which were already approved. They have already gone through this process and have entitlements in place. As such, it is clear that A.B. 390 would halt the development of any future quality projects. Your vote against A.B. 390 is a vote in support of fair growth in southern Nevada.

Russell Rowe, Legislative Advocate, representing Focus Property Group, Las Vegas, Nevada:
As you may know, Focus Property Group is one of the master developers in the state. We currently have four master-planned communities either under construction or in the planning process in southern Nevada. We also have concerns with this legislation, specifically, because the impact of the increased distance requirement would essentially prohibit any development of a neighborhood casino within a master planned community.

The reason why that is important is because we are going to meet the major issues of growth in southern Nevada. These issues are the issues that Clark County is trying to tackle right now—air quality, water use, transportation, and traffic congestion. We need to develop communities where individuals and residents live, work, and play within those communities. That is what Focus Property Group is trying to do in the master planned communities that they are developing today.

You may have read about the development of 1,900 acres in Henderson, where we are trying to build a community where we mixed the uses of residential and commercial properties so people do not have to drive outside of the master planned community just to get to work. This is one of the major impacts and major motivators behind increased air pollution in our valley. It is one of the major ways we can address those problems.

With this legislation, it will make it virtually impossible to build those types of communities. An existing 500-foot radius around a neighborhood resort is difficult enough to fill with non-residential uses and still maintain a walkable community where you can have sufficiently spread out commercial uses, so residents can walk to the grocery store and not have to get in the car to drive there. If you spread that to 5,000 feet, it is essentially a 2-mile radius around

those resorts and will make it virtually impossible to achieve that type of goal. So we would oppose this legislation for that very reason. We think it will make it extremely difficult to achieve those goals that southern Nevada is trying to achieve with respect to the issues of growth, particularly air quality and traffic.

[Russell Rowe, continued.] Additionally, it has been our experience that residents purchasing homes in master planned communities prefer to have neighborhood resort type amenities. As Mr. Cumbers indicated, they often come with movie theatres, restaurants, and retail facilities. Those are amenities that residents like to have nearby. I myself live near Green Valley Ranch and go there all the time as it is convenient, and is a very well designed resort.

When I'm not at the Legislature, I am a land use zoning attorney with Kummer, Kaempfer, Bonner, and Renshaw. We have handled a significant majority of the gaming enterprise district applications in southern Nevada. Since S.B. 208 of the 69th Legislative Session was adopted, I can echo the comments of Mr. Cumbers. Not one of those applications has been approved where there is significant neighborhood opposition and made it through the appeal process; not one to my knowledge. You either work out the issues or it doesn't go forward. When there are issues, they are not distance issues, but usually design issues—the height of buildings, how the character of the structure looks, and how they blend with the community. When it is in a master plan community, we as the master developer have a lot of control over that.

I just wanted to share those comments with you and hope you will consider them as you deliberate on this bill.

Assemblywoman Angle:
Since you are an attorney, the law currently states 1,500 feet, but could a local government make it a stronger law? Could more ordinances strengthen that and make the distances even further? Can the local government define this more clearly than state law?

Russell Rowe:
That is correct. In fact, Clark County has adopted some additional restrictions with respect to gaming enterprise districts that go beyond S.B. 208 of the 69th Legislative Session. To address Assemblyman Mortenson's earlier question about whether there is a grandfather clause in this bill, there is not an explicit grandfather clause, but by law there would be a *de facto* grandfather clause. Any establishment that has their gaming entitlements is not going to be impacted by this legislation.

Assemblyman Mortenson:
Just roughly, would you have any idea how many of these entitled properties exist in Clark County?

Russell Rowe:
I don't think it is more than a handful that is already entitled, but I'd have to do some research.

Chairman Anderson:
I was under the impression, from the information that was presented by an earlier witness, that the map you presented had 17 properties that were identified. I don't know whether that is an accurate rendition. It may be at least a possibility that they are the ones identified by groups who are concerned about this particular issue.

Russell Rowe:
I would echo those comments, and perhaps that map includes both entitled and properties owned by gaming companies that may not yet be entitled yet. I have not seen the map.

Assemblywoman Ohrenschall:
I would like Mr. Rowe to clarify this. I would be interested to know exactly what properties are grandfathered, and which properties are owned but not grandfathered. I think it would give us a more complete picture of what is going on in the area. If the Committee could request that information, I would really appreciate it.

Chairman Anderson:
If you could provide that information to Ms. Combs, then we can make sure the full Committee has it, if we take up this piece of legislation in a work session. [Exhibit L submitted.] The hearing on A.B. 390 is closed. We will put it back to Committee, as we have questions identifying the existing properties. There is a possibility of removing some of the language from this bill and clearing up some conflicts of interest that exist in the bill. Let us move to A.B. 467.

Assembly Bill 467: Makes various changes concerning actions involving prisoners. (BDR 2-519)

Dan Papez, District Judge, Seventh Judicial District Court of Nevada:
I am here today to speak in support of A.B. 467. That bill is sponsored by the Nevada Supreme Court and has been endorsed by the Judicial Council of the

State of Nevada. The bill seeks to limit frivolous lawsuits from prisoners, pure and simple. It does so in several provisions that we are trying to add to state law.

[Judge Papez, continued.] Let me give you an idea of how prison litigation usually makes its way to the court. As you are all aware, White Pine County is the home to Ely State Prison. We have about 1,100 inmates presently incarcerated there. They are quite a litigious bunch, and provide many cases through each year. Usually, the way the cases come to court is that most of the inmates are indigent, so they seek to proceed under NRS 12.015, where they request to be able to file a lawsuit without paying the fees that someone who is not indigent would normally have to pay to file a lawsuit. It is called a Request to Proceed *in forma pauperis*. Usually that is commenced by a motion when they file an affidavit stating whether they have any assets or not. Then a request to the court for an order that allows them to proceed *in forma pauperis*, which means they can file their lawsuit without paying the filing fee. They can also have process served by the local sheriff's office wherever the defendant resides. If they qualify under the statute, we issue the order that allows them to proceed regardless of whether the lawsuit seems to have merit or it is frivolous.

What we are seeking to do with the amendments that we're proposing to this statute is exactly what the federal district court judges now have at the federal level. The federal judges already have this power under a *United States Code*. So we have taken the language from the federal statutes and want to make it applicable to state judges to give them the power to review these matters.

Basically, under the *in forma pauperis* statute, we are seeking the grounds to deny the inmates the opportunity to proceed *in forma pauperis* if they have filed 3 or more previous lawsuits that have been dismissed as frivolous and malicious, or failure to state a claim. That does not mean their lawsuit cannot go forward at all. It simply means it cannot go forward without waiving the fees that the statute allows for. That would give us some opportunity to limit frivolous lawsuits. I might add that the Nevada Supreme Court stated in the case *Barnes v. Eighth Judicial District Court* [103 Nev. 679, 748 P.2d 483 (1987)] that the legislative purpose of enacting NRS 12.015 was to spare the expense of financing frivolous lawsuits filed by indigent persons. Once again, the amendment we are seeking would only affect prisoners.

Assemblyman Horne:
When three or more suits have been deemed to be frivolous, then you are supposing the fourth suit is obviously frivolous, so they have to pay, when it very well may not be frivolous. Generally, each suit stands or falls on its own. In

this instance, you would be requiring this subsequent suit to stand on the shoulders of the previous ones.

Judge Papez:
That is correct. That is the power that federal district court judges have at this time, as well.

Assemblyman Horne:
I understand these prisoners file a lot of suits. When they come before a judge, I don't see a great expenditure other than the time it takes the judge to say it's frivolous, so the lawsuit has to go away. We are not providing attorneys for these prisoners. I'm trying to find the great harm that you are trying to alleviate.

Judge Papez:
You're right. This is what I do—I handle lawsuits. You're asking, what is the extra time, as that is what you do as a judge. But when the lawsuit is allowed to go forward and it is served on the opposing side, in most instances the lawsuits are against correctional officials and other state officers. The defendants will include the Attorney General and the Governor. The Office of the Attorney General usually provides the representation for all of these people that are named in these lawsuits. It is time consuming, especially where the lawsuit is frivolous. It starts a flurry of paperwork going back and forth. It is time consuming and expensive because the State and the people that are being sued have to respond to the lawsuit.

In any event, it would amend NRS 12.015 for those stated purposes. The other amendments to the statute, by adding some provisions to Chapter 41, would allow a state district court judge by motion, or the court's own motion, to dismiss any action that is brought by a prisoner pursuant to state or federal law or maintained by a prisoner with respect to conditions of confinement. If the court is satisfied that the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or it is suing someone who is immune, it can be dismissed.

We have even had cases where a trial judge not related to the present case is named as a defendant for some perceived action when they would be immune from suit. It allows the state trial judge, upon the filing, to review the complaint. We get numerous complaints like this filed. My law clerks probably spend one-third of their time on inmate litigation. We look at these things very carefully. It is not our intention to dismiss lawsuits from inmates. They have a right to have access to the courts like anyone else does. We recognize that, and we respect that. I think we go out of our way to give them every benefit of the doubt when we are examining their lawsuits.

[Judge Papez, continued.] There are many of these lawsuits that are frivolous on their face that don't state a claim. They are a total waste of time and effort by everyone to allow them to go forward. The proposed legislation would allow state district court judges the power to act on these on their own motion and dismiss the action for those reasons. Let me add that there is a safeguard with that as well; those decisions can be appealed to the Nevada Supreme Court. That's an additional safeguard there.

That basically provides a summarization of the amendments that we are seeking for you to pass.

Assemblyman Horne:
Oftentimes these suits are frivolous on their face and a lot of times you will get common arguments. You already have these documents on the computer. You have good law so all you have to do is a cut and paste. There is not a lot of research that is required. How time consuming is it when you get these from prisoners who are multiple filers? Oftentimes, it is the same type of suit and failure to state a claim. You can go into your computer and pull it up. It has been answered before and it seems to be pretty straightforward. It doesn't seem like you would have to provide a vigorous defense.

Judge Papez:
I would agree on the front end that it could be done rather readily. What I am saying is that state district court judges do not have that power to summarily do that. What we are asking for is the authority to do that like the federal district court judges have. These lawsuits are, on their face, malicious, frivolous, or fail to state a claim. So even before they are launched, we have the authority once they are filed, and we are presupposing we have already allowed them to proceed *in forma pauperis*. If they haven't been disallowed to file their suit under the indigent waiving of costs statute and the suit has actually been filed, it doesn't require extensive litigation on the part of the defendants to get where you are going anyway. That is a dismissal for one of the reasons we have spoken about.

It is extremely time consuming. These files grow by the inch every month. Many of the case files that I deal with are the accordion files. They are constantly being filled up with motions, pleadings, and requests for discovery. Why go through all of that when you don't have to? A state judge could look at it right from the beginning. If it falls into these categories, it is dismissed.

Richard Wagner, District Judge, Sixth Judicial District Court of Nevada:
The Lovelock prison is in my jurisdiction. Two of us judges have many of these filings. I am not going to repeat what Judge Papez said, but I would like to

illustrate to you one case, not by name, but by facts. I had one inmate who filed nine lawsuits because his typewriter was taken, because he was sanctioned for helping the other prisoners file briefs and practicing law. So he filed nine separate lawsuits that all had to be dealt with by two district judges and one justice of the peace. That is the type of thing that really takes a lot of time. You think it doesn't, but when the Attorney General has to respond, it takes their resources and also the resources of the court clerks. There is a tremendous cost to the taxpayers.

[Richard Wagner, continued.] I fully believe that prisoners should have full access to the courts. It is a very important thing. These kinds of lawsuits deprive those people that truly have genuine claims from having the resources to really be heard. It harms the people who have genuine issues. This simply mirrors the federal law. Any prisoner or any person can file a lawsuit if they come up with the filing fee. The taxpayers should not be paying the filing fees for people who want to file frivolous lawsuits. That is one important part of this.

Chairman Anderson:
I guess there is a question of who is being harmed in terms of whether it is frivolous. Your ability to pay is always difficult if you are in prison, as you don't have a lot of resources available to you to raise funds.

Daniel Wong, Assistant Solicitor General, Office of the Attorney General, State of Nevada:
I help lead the Litigation Division within the Nevada Attorney General's Office. The Litigation Division handles, among other things, inmates' civil rights lawsuits. I am here in support of the judges and in support of this particular bill.

Matthew Jensen, Deputy Attorney General, Office of the Attorney General, State of Nevada:
I am speaking in support of A.B. 467. First to address Mr. Horne's question; you were inquiring about the cost savings of this bill. This bill's provisions essentially track those of the Prison Litigation Reform Act (PLRA), which was enacted at the federal level. After the enactment of the PLRA, we saw our inmate litigation cases in the Attorney General's Office drop from approximately 250 to 100 cases per year. These cases do not go away within a year. They compound, and their effect is cumulative. As the judges pointed out, it is a flurry of paperwork. It is countless hours by 10 or 11 attorneys in the Attorney General's Office practicing primarily in this area of civil rights litigation.

The bill does not hinder the inmates' access to the courts. Neither does this bill render mischievous inmate litigants incapable of bringing their actions. After a litigant demonstrates again and again, that he is bringing his multiple suits for

the aim of using the courts to foul the operations of state agencies and attacking the state employees by miring them down in time consuming and costly litigation, this places a reasonable cap on their ability. That cap is simply the requirement that they pay, as all free persons must pay, the filing fee when they initiate a lawsuit.

[Matthew Jensen, continued.] It also gives the judges the ability to control their caseload by simply reviewing a case and making the judgment where it is obviously legally incapable of being maintained.

Assemblyman Horne:
But it does limit their access in the area of *in forma pauperis* because they are incarcerated. I have had family members who were incarcerated and received a collect phone call asking for money to be put on their books. They don't readily have funds to file. If you take that away and they have to pay, aren't you making it more difficult to reach the courthouse?

Matthew Jensen:
Only after they have shown to be vexatious litigants and only after they have shown to repeatedly abuse the process. They have the privilege of filing *in forma pauperis* three times. That's three times where their suits have been found to be frivolous, malicious, or failing to state a claim. If their suits are lost on other grounds, they do not have that limit placed on them for that suit. These inmates, oftentimes, and there are relatively few of them, engage in recreational litigation for the sole aim of tying up agencies and attacking correctional officers and administrators like the Governor's Office and the Secretary of State's Office. They attack multiple agencies. This is simply a way of placing a reasonable control. It has been shown again and again in the federal courts to be constitutional and necessary.

Assemblywoman Gerhardt:
I'm just curious. How much money are we talking about to file on an average? How expensive is it to file one of these?

Chairman Anderson:
For the record, Judge Wagner stated the fees were $130 to $140.

Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections:
One lawsuit we had was the audacity to serve chunky peanut butter. We have been sued for retaliation against an inmate, who filed many lawsuits, because we served him an inadequate size of a piece of cake. The piece of cake had inadequate icing on it. We have been sued because we followed the instructions

on an air-delivered kosher dinner, which instructed us to slit open the top of the kosher dinner so it could be microwaved. The inmate litigated against us that it was no longer kosher when one followed the instructions for cooking it. When we cooked it without opening the cover and it exploded, he sued us for not having the proper nutritional content in his dinner.

[Fritz Schlottman, continued.] I have been to all-day settlement conferences on chunky peanut butter and have spent hours going through the records on the decision to serve chunky peanut butter. I have spent a great deal of time gathering up all the files, necessary documents, and being deposed on chunky peanut butter. You get to the point that this legislation makes a lot of sense.

Gary Peck, Executive Director, American Civil Liberties Union of Nevada:
I think it is very important at the outset to just be clear here. When people say this is not designed to limit the access of inmates to the courts, that is simply factually not correct. It is also important to know that we at the ACLU [American Civil Liberties Union] have litigated many cases to conclusion successfully on behalf of inmates. When we started out in those cases, the Attorney General's Office and prison officials would routinely say the cases were frivolous, malicious, and without merit. So I think it is important to understand we are in an adversarial system here. We are in an adversarial system where many of the people who bring lawsuits are only able to bring those lawsuits because they file *in forma pauperis* status.

I had the privilege of clerking for a federal judge who was the chief judge of his district and was a conservative, former prosecutor. He made it a point to ensure that every *in forma pauperis* case was reviewed on the basis of the facts of the individual cases themselves, not on the basis of prior lawsuits brought by the inmate. He did this with a full understanding that it increased his workload, but also with a deep-seated belief that bad prior behavior or cost should never be a bar to bringing a legitimate action in a court of law. This bill would force judges to dismiss cases before them on the basis of prior cases, rather than on the basis of the facts relevant to the instant lawsuits they are being asked to consider.

This Committee just discussed last week the issue of sexual assault and rape in jails. This bill could create the unseemly circumstance of someone whose only means of filing a legitimate lawsuit in a circumstance where they had been raped or sexually assaulted by a prison guard or impregnated by a prison guard. But if they had filed three frivolous lawsuits in the past, they would be barred from going forward with an obviously legitimate action. That is abhorrent. It is an affront to the *Constitution* and it is quite simply wrong and unseemly.

[Gary Peck, continued.] Lastly, it is important to make a distinction between the two kinds of cases that are described in this bill. There is a big difference between "frivolous" lawsuits and lawsuits that "fail to state a claim," or go after the wrong person. As the lawyers on your Committee know, including the vice chairman, even lawyers state claims that sometimes fail to make out a legal case, or they name the wrong defendants.

We are talking about people who are not only poor, but people who oftentimes have to represent themselves and aren't lawyers. Absolutely no one should be barred from bringing a subsequent, legitimate, credible claim because on three prior occasions they had failed to properly state a legal claim or had named the wrong defendant. That, too, would be an affront to the *Constitution* and abhorrent to all of our senses of justice. I think it is important to keep our eye on the ball here. To say that this isn't about limiting access to the courts is simply not factually correct. That is what this bill is about.

Chairman Anderson:
The hearing on A.B. 467 is closed. It will be brought back to Committee and we will put it in a work session document.

I have a list of documents that need to be entered into the record concerning A.B. 390 (Exhibit L).

[The meeting was adjourned at 11:24 a.m.]

RESPECTFULLY SUBMITTED:

____
Carole Snider
Committee Attaché

APPROVED BY:

____
Assemblyman Bernie Anderson, Chairman

DATE:______________________________

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 6, 2005 **Time of Meeting: 8:13 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
AB 452	B	Legislative Counsel Bureau	Restoration of Civil Rights Information
	C	Assemblyman Harvey Munford	Voting Rights Restoration Information
	D	Paul Brown, Progressive Leadership Alliance in Nevada	Letter to Committee
	E	Paul Brown, Progressive Leadership in Nevada	Email to Committee
	F	Lucille Lusk, Nevada Concerned Citizens	Statement to Committee
AB 390	G	Roy Adams, Legislative Advocate, Spanish Springs Residents	Letter to Committee
	H	Roy Adams, Private Citizen, Spanish Springs Residents	Petition Against Casinos in Spanish Springs Valley
	I	Shirley Bertschinger, Private Citizen, Mesa Meadows Property Owners	Letter to Assemblyman John Marvel
	J	Carolyn Edwards, Private Citizen	Chart and Map
	K	Michael Alonso, Attorney at Law representing Harrah's	Statement and Map
	L	Sparks Residents	Emails to Chairman Anderson