

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
April 8, 2005**

The Committee on Judiciary was called to order at 8:13 a.m., on Friday, April 8, 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
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

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

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Judy Maddock, Committee Manager

OTHERS PRESENT:

John E. (Jack) Jeffrey, Legislative Advocate, representing Phillip Morris USA, Inc.
Samuel P. McMullen, Legislative Advocate, representing Phillip Morris USA, Inc.
Ben Graham, Legislative Representative, Nevada District Attorneys Association
Teresa Lowry, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, Clark County, Nevada
Nancy Saitta, Judge, Eighth Judicial District Court, Department 18, Clark County, Nevada
Frances Doherty, Judge, Second Judicial District Court, Washoe County, Nevada
Leonard J. Pugh, Director, Department of Juvenile Services, Washoe County, Nevada
Howard Brooks, Legislative Representative, Nevada Attorneys for Criminal Justice
Robert D. Faiss, Legislative Advocate, representing Cantor G & W (Nevada)
Joseph M. Asher, Managing Director, Cantor Fitzgerald, New York
Dennis Neilander, Chairman, State of Nevada Gaming Control Board
Mark A. Clayton, Esq., Board Member, State of Nevada Gaming Control Board
Scott Scherer, Legislative Advocate, representing Diamond I Technologies, Inc.
Anthony N. Cabot, Legislative Representative, Nevada Pari-mutuel Association
William Bible, President, Nevada Resort Association
Jeff Siri, Chief Executive Officer and President, Club Cal Neva, Reno, Nevada
Michael G. Alonso, Legislative Advocate, representing Harrah's Entertainment, Inc.
Leif Reid, Attorney, Lionel Sawyer and Collins, representing Town Club, Inc., owned by Nevada Casinos, Inc.

Chairman Anderson:

[Meeting called to order. Roll called.] Let me move to A.B. 486, which is on the bottom of our agenda for the day.

Assembly Bill 486: Makes various changes to provisions governing provision of bond in certain civil actions concerning manufacturers of tobacco products. (BDR 2-1375)

John E. (Jack) Jeffrey, Legislative Advocate, representing Phillip Morris USA, Inc.:

Assembly Bill 486 is actually a clarification of what we did four years ago. As you recall, Mr. Chairman, four years ago we passed a cap on appeal bonds that were specific to tobacco lawsuits. We put a \$50 million cap on that amount of the appeal bond, and we tied it to the four major companies that were signatories to the Master Settlement Agreement negotiated with the Attorneys General of various states. We were the first state to pass this kind of legislation, and this is one time that being first wasn't necessarily the best. We passed the bill toward the end of the session, and we made a mistake in leaving out some of the people that should have been involved under that cap.

This bill takes care of that problem. I would anticipate that the people we are covering would be primarily wholesalers and retailers of tobacco products. However, the way the legislation reads, anybody that's named in the lawsuit could potentially be covered by this cap. It's also important to note that we're not talking about anything to do with the judgment here; it's only the amount of the bond that needs to be posted to appeal the verdict or the judgment.

Chairman Anderson:

I believe we were able to get this particular part of the bill out of this Committee in the last session. It ended up dying. This time, we made sure we broke that bill into three separate parts. We still have this particular part of the question to settle. Mr. McMullen, is there anything you wanted to add to our presentation?

Samuel P. McMullen, Legislative Advocate, representing Phillip Morris USA, Inc.:

I would be happy to answer any questions, but I thought Jack covered it very well. If you would flip to page 2, you'd see that lines 4 through 7 used to limit the applicability of this only to a signatory. On page 1, we have clarified that if the litigation involves not only a signatory to the Master Settlement Agreement, but a successor in interest or an affiliate, then that is what triggers this appeals bond cap.

[Samuel P. McMullen, continued.] On lines 11 through 16, and following on the bottom of page 1, there is an opportunity for a judge—if they think those conditions are met—to increase that appeal bond cap, so that the judgment is protected.

Assemblywoman Buckley:

Refresh my recollection as to why it's necessary to single out one entity with regard to the amount of appeal bonds, and secondly, why the court's discretion with regard to the amount of money in question is not sufficient to ensure that an appeal bond would be reasonable.

Samuel P. McMullen:

The real impetus for this bill was that we were seeing foreign judgments and judgments in tobacco litigation in the billions of dollars. Under the law, you basically have to post a bond for the underlying judgment. For example, you were to post a bond for a billion dollars. At the time, the bond market for those kinds of appeal bonds doesn't have that capacity.

First it was a practical issue that—at least to the extent we had seen across the country—these matters of litigation could arise with judgments that were in a range outside the bonding capacity of bonds available for this. We targeted only to this specific type of litigation because it was right in front of us at the time, and it was the only thing that was of concern. Also, the trial lawyers felt comfortable limiting it to that. Consequently, since it's a mandatory bond, it was to make sure there was a mandatory \$50 million appeal bond. The discretion of the court still intervenes if there's an attempt to evade the ultimate payment of the judgment, or dissipate or divert assets. I hope that answers the question.

Assemblywoman Buckley:

There's no analogous situation that's conceivable, in terms of a billion dollar judgment and the issue of an appeal bond being so large in a massive tort, or a massive product liability case?

Samuel P. McMullen:

There may be. I didn't mean to suggest that there may not be. I was trying to indicate in my testimony that part of the original formation of this particular statute, and the agreement on it, was that it would be limited concisely to litigation involving signatories to the master settlement agreement. Again, they're not all just sued as that one company. Their affiliates are sued; the whole chain of distribution, including wholesalers and retailers, are sued. That's the reason to broaden it. Because we made that commitment in the deal with

the trial lawyers, we certainly wouldn't go back on it. You're right; there are opportunities, I'm sure, for other judgments to go above that.

Chairman Anderson:

The heart of this bill is the language in Section 1, lines 8 and 9. The rest of it is predominantly moving sections around, and definitions.

Assemblyman Carpenter:

This would cover a small convenience store if they were named in a suit?

Samuel P. McMullen:

Correct. If they were named in a suit, for the appeal to be accomplished the \$50 million bond cap—assuming that the judgment on the district court level was over that—would apply. That would cover all of the participants in the litigation as defendants, or appellants as we would call them at that point.

Chairman Anderson:

To understand Mr. Carpenter's scenario, if someone decides to sue because of smoking problems, and they start at Bubba's Tobacco Shop and then go to the distributor, those folks would all be protected? Is that what you're trying to do?

Samuel P. McMullen:

Absolutely.

Chairman Anderson:

This is under the same protection that was originally given to the parent corporation under the tobacco settlement?

Samuel P. McMullen:

Correct.

Chairman Anderson:

Are there any other questions from members of the Committee? Is there anybody speaking in opposition? We'll close the hearing on A.B. 486. The Chair will entertain a motion.

Assemblyman Carpenter:

Hopefully it will never come to be, but I could be named in one of these. For disclosure, it won't affect me or you.

Assemblywoman Ohrenschall:

In order to avoid any appearance of impropriety, I am abstaining from this vote. I am on the board of directors of some companies that deal in tobacco products.

ASSEMBLYMAN OCEGUERA MOVED TO DO PASS
ASSEMBLY BILL 486.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Holcomb was not present for the vote. Ms. Ohrenschall abstained from the vote.)

Chairman Anderson:

Let's open the hearing on A.B. 329.

Assembly Bill 329: Revises provisions governing juvenile justice. (BDR 5-66)

Assemblyman Richard Perkins, Assembly District No. 23, Clark County, Nevada (part):

There have been extensive discussions about this bill and there's information that Mr. Graham wants to make sure the Committee has in front of them.

Mr. Chairman, my opening remarks are not specific to the information, so I'll proceed. In more than 20 years as a police officer, I've noticed that sometimes the justice system is faced with situations where a very serious crime is handled through the juvenile scheme, when for all intents and purposes the juvenile should be tried as an adult. The young offender will get off lightly for committing very serious crimes. This is unfair to families who have suffered so much at the hands of the victim, and it is unfair to the rest of society living under the threat of recidivism. When asked by the victims, "why does this happen," the only thing one can turn to is the laws we have in our statutes.

Once in awhile, a generally good kid does something that turns him into an adult felon. Under current statutory guidelines, the good child becomes a felon for life. The harsh reality is that being a felon has devastating ramifications on the rest of his or her life. Being put through the criminal justice system at such a young age can effectively prohibit a young person from ever reforming, rehabilitating, and becoming a benefit to society as a whole. These people are not necessarily bad people; they just did a bad thing.

The purpose and goal of this legislation is to offer the juvenile justice system more sentencing options, and with these options provide for fairer sentencing. Current law requires that, for certain crimes, we must try children as adults, regardless of circumstance. We need to recognize that life is not black and white, only many shades of gray. This bill will give judges the authority to

review the nature and seriousness of the charge, the persistency and seriousness of prior convictions, and the child's background when deciding how the young person will be certified and tried. This bill will allow a judge to extend jurisdiction over youthful offenders beyond the age of 21 in certain circumstances. The judge's option would be expanded.

[Assemblyman Perkins, continued.] Rather than keeping the child for a short program in juvenile detention, or sending them on to an adult prison, he or she could be placed in a youthful offender facility for up to 3 years, allowing the good kid to pay a debt to society without society branding him or her a felon for life. We have the opportunity here to do something unique, and to have it both ways. This measure stops those children who have made youthful mistakes, as egregious as these mistakes may be, from being washed away in a system that will drain them of their potential. Simultaneously, it allows us to more effectively address repeat offenders and the perpetrators of serious crimes.

Mr. Chairman, on the information that you have in front of you ([Exhibit B](#)), the proposed amendments have been worked on by a number of folks, and I'd like to thank all of them for their participation. The purposes are:

- To provide for the establishment of youthful offender facilities by the Department of Corrections, to which a person under the age of 21 may be committed by the juvenile court or by the Department of Corrections.
- To identify the type of delinquent acts which must be found by juvenile court in order to commit a child to a youthful offender facility.
- To allow the juvenile court to commit a delinquent child who is under the age of 16 years to the custody of the Division of Child and Family Services of the Department of Human Resources for an indeterminate period of not more than 3 years, in certain circumstances.
- To authorize the juvenile court to commit a child to any appropriate facility during proceedings involving a criminal offense excluded from the original jurisdiction of the juvenile court, and establish factors which the juvenile court must consider in determining the facility in which to place a child.
- To authorize the juvenile court to order a child who has been released on parole from the state facility for the detention of children to be placed back in such a facility for a period, if the child violates the term or condition of his or her parole.

Chairman Anderson:

How widely circulated were your amendments? Mr. Graham, I presume you had a hand in putting together the amendments?

Ben Graham, Legislative Representative, Nevada District Attorneys Association:

I made every effort possible, including what is happening at the moment, to see that everybody has copies of these amendments. Late yesterday afternoon we distributed copies to people up here in the north. I thought it had been done in the south, but it's my understanding that they did not have them in the Sawyer Building. They should have them by now.

This is a process that has been going on for months. There are pieces of these amendments that people have seen far ahead of time. All of the people involved understand that we have an opportunity to meet with the Speaker early next week to work out any difficulties prior to a work session.

Chairman Anderson:

As the Speaker knows, next Friday is April 15 and that's the last day that we have to get things out of Committee.

Assemblyman Perkins:

Before we go through the amendment, I'd like to add my thanks to Chairwoman Leslie and her interim committee. I know this was one of the topics they spent a great deal of time looking at, and they struggled with trying to find what was best for our state. This is not the first time this Legislature has dealt with these issues; there are a number of very high-profile cases over the last couple of years that bring it back to the fore. I think it is important public policy for our state to have additional options, as well as the protections for those that need them.

Chairman Anderson:

Were these amendments shared with Ms. Leslie?

Ben Graham:

I don't believe she has seen this latest version, but we'll be sure that she gets it as soon as this hearing is concluded.

Chairman Anderson:

Speaker Perkins, if you want to take us through the amendments, we'll be more than delighted to see what the impact is going to be.

Assemblyman Perkins:

In Section 1, subsection 4 ([Exhibit B](#)) there is this language, "The juvenile court may place such a child in any facility which the juvenile court deems appropriate, including, without limitation, a jail or facility for the detention of children. In determining the appropriate facility in which to place the child, the juvenile court must consider:

- (a) The age, physical characteristics, emotional state and intellectual functioning of the child;
- (b) The safety of the personnel of the facility and other persons who have been placed in the facility; and
- (c) The recommendations of the facility."

In essence, identifying which facility is appropriate for each individual child that falls under this particular bill.

[Assemblyman Perkins, continued.] In Section 2 ([Exhibit B](#)), it talks about the Director of the Department of Corrections designating a youthful offender facility. I know that's been a desire by the Department to have a facility so they're not commingling younger offenders with the more hardened criminals. In that same section, in subsection 2, "The juvenile court may commit a child to a youthful offender facility for a period of not less than 1 year and not more than 3 years if the child is at least 16 years of age at the time of commitment and the child has been adjudicated delinquent for committing an act:

- a) That is based on facts that could have caused the child to be excluded from the jurisdiction of the juvenile court [pursuant to NRS 62B.330], but for which the child was not excluded or for which he is no longer excluded; or
- b) That caused the death of a person that would constitute a felony if committed by an adult."

That whole section's purpose is to allow a more stringent sentencing opportunity for somebody that is a child, at least age 16, but did not commit one of the automatically certifiable offenses—murder, attempted murder, rape, the weapons class crimes. But society and the justice system may determine that sending them to a juvenile facility under our current statutory scheme would not be enough of a punishment for that particular individual.

In Section 4, subsection 2 ([Exhibit B](#)) there is similar language: "The juvenile court may commit a child to the custody of the Division of Child and Family Services for placement in a correctional or institutional facility for a determinate period not to exceed 3 years if the child is under the age of 16 years at the time of the commitment, and the child has been adjudicated delinquent for committing an act:

- a) That is based on facts which could have caused the child to be excluded from the jurisdiction of the juvenile court pursuant to NRS 62B.330," which is where all the more egregious offenses are

located, "but for which the child was not excluded or for which he is no longer excluded; or

- b) That caused the death of a person and that would constitute a felony if committed by an adult."

[Assemblyman Perkins, continued.] The last piece of the amendment talks about the issues relating to being released on parole and how the juvenile can be reacquired into the system. Again, I know it's not unfamiliar to this committee that, in general, a child does not commit a crime. They commit a delinquent act. That's how we protect our children from a lengthy criminal record following them around, unless they commit one of the offenses in our state that is that much more egregious. The purpose is to try to create that middle ground. We're not talking about general delinquent acts, or the child that's in need of supervision. We're also not talking about the most egregious things where you go directly to the adult system. It's that middle ground that may require more of a penalty for the acts that are committed, both for the rehabilitation of the offender and for the satisfaction of the victim and/or the victim's family.

We have committed to meet with a number of folks early next week to see if there are things we can iron out and have this back in front of your committee early next week, as we are all mindful of the deadlines.

Teresa Lowry, Chief Deputy District Attorney, Juvenile Division, Office of the District Attorney, County, Nevada:

We have received a faxed copy of the amendments ([Exhibit B](#)). I, and Chief Deputy Public Defender Susan Roske of the Juvenile Division, each have copies of the amendments.

Chairman Anderson:

And Mr. Brooks does also?

Teresa Lowry:

He does, sir.

Chairman Anderson:

I just want to make sure we're all playing with the same set of cards.

Nancy Saitta, Judge, Eighth Judicial District Court, Department 18, Clark County, Nevada:

I am here only as a representative of a system that supports the efforts, and certainly the intent, of this bill. Obviously we all share the concern about adult incarceration facilities. There are some concerns that remain a part of this bill, in terms of procedural issues that deal with how we house these young offenders,

and keeping them separate from adults. There is procedural work that we'll have to do on this bill. We have advised the Speaker of our concern, and, as he has noted, we are going to be working toward resolving them. The most significant concern that the Judiciary has about this bill is that it represents, at least to some, a shift from the form of sentencing that we typically rely upon when we are dealing with juveniles.

[Judge Saitta, continued.] I think it is important for the Committee to be aware that none of these options are mandatory. In fact, they all remain discretionary. To the extent that the juvenile judges maintain their jurisdiction and apply their good judgment to the determination of how the child will be tried, we are hopeful that this bill will be able to do what it is intended to do with support from all after we reach more of a consensus before the work session. We are mindful of the concerns about separation of sight and sound in determinate sentencing.

Chairman Anderson:

Judge Saitta, with the amendments, the bill is a little more acceptable but not quite to a perfect point?

Judge Saitta:

That's a fair statement, Mr. Chairman, yes.

Assemblyman Horne:

I'm glad Judge Saitta mentioned some of the procedural issues. I was curious if you've spoken about the procedure on exactly how the juveniles would be adjudicated. We have trials and sentencing, and juvenile court is different. If we have in here the provision of 1-3 years, are we going to have full-blown jury trials now? We're saying we're going to treat them like adults now but put them in juvenile prisons.

Judge Saitta:

Your understanding is, with all respect, not accurate. We will not be treating juveniles in all instances as adults. They will not, in all instances, be before an adult jury panel. The process remains essentially the same. Certain children will be certified, which means they are treated as an adult in the adult system, and, therefore, are subject to all of the rights and protections of that system. It also adds other options that we presently do not have. It has been referred to as a "blended sentencing" guide.

Again, I want to stress that we are mindful of the concern that our state has to have for allowing children under a certain age to mingle with adult offenders. That would put us in a place that we don't want to be, and that is in direct

conflict with federal regulations and grants that we receive. You should also understand that this youthful offender facility we are talking about does not yet exist. It would have to be created. Obviously, this is something that could not happen in the immediate future.

Chairman Anderson:

I think the Juvenile Justice Committee, on which I served and Ms. Leslie chaired, did take up the question of blended sentencing. However, there was no appetite to do extensive discovery to flush out all of the difficulties of the blended sentencing question because of other issues relative to the juvenile justice study itself. That's one of the reasons why one of the recommendations was to have an ongoing study of the juvenile questions.

Assemblyman Horne:

Perhaps I spoke more generally than I should have. In the instances where juveniles are not deemed to be adults—they haven't committed those crimes that automatically put them in the adult category, but their offenses are deemed serious—under this bill, those particular juveniles could possibly serve a term of 1 to 3 years. If you're going to have extended jurisdiction for a juvenile, but we haven't deemed them as adult, how do you incarcerate them for a term of 1 to 3 years without that jury trial?

Judge Saitta:

Good question. The procedural issue is perhaps the biggest hurdle we face in the area that you identify, the youthful offender facility. Jury trial issues have not been a part of the juvenile process. To the extent that the child is adjudicated delinquent and remains in the delinquent system, I don't anticipate a change in that. I don't believe there would be a problem with their due process rights, either. I wish to defer to those who know far more about that system than I do.

Assemblyman Perkins:

There are a number who are incarcerated in youth camps or youth facilities all over the state for fairly lengthy periods of time, and are not afforded the opportunity for a jury trial because we're considering them delinquent acts, not crimes. I believe it's been debated throughout our legal system in this state for quite some time and has been upheld at this point. Would this be a further discussion on those legal points? I imagine there might, but I still think it's more analogous to our current juvenile system than it would be to our current adult system.

Assemblywoman Buckley:

I think my two biggest concerns with the issue are the ones identified by Mr. Horne and the volume. I know the case that is the impetus for this examination, and I think there are cases like that where it would be good to have more options, which I believe is the purpose for the bill.

What I worry about is volume. Putting aside that case, we probably could find cases every day where we would like to do some sort of blending of the two systems. If we do that, how are we going to find room? What would be the problems with having that kind of volume go into the adult system? Maybe the discussion next week could look at that issue. We went on adult prison tours in 1995 and 1997, and some of the older cons said to get these kids segregated because of the issues that go on in the prisons. Maybe that is something you could explore with the great working group you've pulled together, what you would do about volume. What if the juvenile judge, who we couldn't control, decided to use this extensively? What would the system then do?

Assemblyman Perkins:

You're right, and I would certainly entertain the opportunity to require some sort of report back to the next session. We meet every two years, and these things should always be reviewed, especially something that is a policy change of this magnitude. Also, there isn't always the opportunity to spend money on youthful offender facilities. We're not trying to fill these places up. There are a number of cases, aside from the one that spurred this discussion, where you have somebody who is 17 years and 10 months and they commit something that is a delinquent act that doesn't rise to that level of being treated as an adult; 60 days later, they're off into the sunset. Perhaps having the opportunity to keep this blending together would be a good policy for our state. I do appreciate the concern about volume as well.

Assemblyman Carpenter:

Judge, I believe I heard you say that, before this could be put into place, we have to build a new facility to hold the juveniles that would be within this "blended sentencing."

Judge Saitta:

I'm going to correct that statement. As the Speaker has subtly corrected me, there are some facilities already available. However, this does anticipate the creation of another facility. As I understand it, it is presently being at the very least discussed, at the most, negotiated, with the use of some federal dollars.

Assemblyman Mabey:

Can you give a non-attorney that is not familiar with these types of things a case, or a similar example, of how this would help?

Assemblyman Perkins:

It certainly wasn't my intention to come up here and provide names and that sort of thing. This person has undergone a great deal of self-reflection, as the families have. I'm very familiar with one of the families. A lot of this sparked from the Sean Larrimore DUI case, it was a crash that happened in Henderson, Nevada. Sean was 16 years old, and 3 of his friends died in the crash. The criminal justice system was torn: do you deal with Sean as a child in a delinquent act, or does he go to prison? The criminal justice system chose to treat him in the juvenile justice system and not in the adult system. It's a very emotional debate among all the parties. I'm not suggesting that we should offer new statutes based upon emotion, but it did create a very stark example of a system that didn't have that middle opportunity.

Chairman Anderson:

Even with this piece of legislation and the judges' having the option, there's no way of predicting whether he would have moved into the adult system. Is that a fair statement to make?

Assemblyman Perkins:

Mr. Chairman, certainly I think that's a fair statement to make. It's important to understand, too, that there was prosecutorial discretion that was used there. The district attorney in Clark County, David Roger, could have pursued either track.

Ben Graham:

I'm excited about this prospect. It brings back long memories when I did defense work. Every once in awhile I'd find a young person who slipped and could have gone off into an adult felon situation, probably not spent any time in custody, but been branded for the rest of their life. This gives the prosecutors, the defense counsel, and the judges an opportunity to give this young person a wake-up call and a little shock of custody, but not brand them as a felon for the rest of their lives. It gives them an opportunity to make good.

Assemblyman Perkins:

Let me finish by suggesting that this bill might not be as difficult as fixing the property tax situation, but I think it's going to be a close second. This is too important an issue to discard, and I don't think we can abandon the concept because of concerns. We're willing to roll up our sleeves and make it good public policy for the state. Thank you for the opportunity.

Frances Doherty, Judge, Second Judicial District Court, Washoe County, Nevada:

I have the responsibility of overseeing the juvenile justice component of our district court. I wanted to thank all of you, as well as Speaker Perkins, for shining a light on juveniles. Whenever we're talking about children in our state, and we have as many minds as we have here in this room, it's a good thing. It's a good thing for community safety, it's a good thing for restorative justice for our victims, and it's a very good thing for our children. Thank you for putting them as a priority today.

My comments are limited to this. Speaker Perkins has attempted to address a very serious and significant issue in our juvenile justice system. He has graciously invited additional input and discussion of some areas of concern that were briefly touched on in the earlier presentation that we think we will be able to successfully address with the Speaker. Those areas of concern were identified as the shift to determinate sentencing and the impact, as well as the sight and sound separation issue of juveniles. When we work with Speaker Perkins in the next few days, we will keep in mind all of the information that we shared with Assemblyman Anderson and Assemblywoman Leslie at the hearings that we held over the course of the last few months. I think that a broad discussion will produce a bill that will be acceptable and something we can be proud of in the state of Nevada. That's what we hope to achieve.

Chairman Anderson:

I have to agree with the Speaker that there has been a long-time need in the state for a facility that can accomplish the right holding place for youthful offenders who do serious crimes, where their physical protection can be assured. Behavior change is what we're all hoping for, and recognition of responsibility. Judge Doherty, you think this is a hopeful bill?

Judge Doherty:

I have optimism.

Leonard J. Pugh, Director, Department of Juvenile Services, Washoe County, Nevada:

My comments would basically be redundant. I think this is a great effort on behalf of the Speaker. There are limited cases that do fall into middle ground. I think the Committee has recognized that. If it is implemented too broadly, it could cause problems. I think that we can craft language that eliminates those concerns, and I am also optimistic that we can make this work for the betterment of our system.

Howard Brooks, Legislative Representative, Nevada Attorneys for Criminal Justice:

We're going to work with Mr. Graham and others on the bill, so we have nothing to add at this time.

Chairman Anderson:

You remain hopeful, Mr. Brooks? You've had an opportunity to review the amendments and hear the testimony. I'm concerned and want to make sure that the Attorneys for Criminal Justice are part of the discussions here.

Howard Brooks:

Yes, we are participating and reviewing the legislation. We've talked with Mr. Graham, with Ms. Lowry, and others, and we will continue to talk with them. This bill has some interesting aspects which we like and some things we're concerned about.

Chairman Anderson:

We're going to close the hearing on A.B. 329. It would appear that amendments are still being worked on.

Let's turn our attention to the mobile gaming bill, A. B. 471.

Assembly Bill 471: Authorizes use of mobile communication devices for gaming and increases number of members of Off-Track Pari-Mutuel Wagering Committee. (BDR 41-1302)

Robert D. Faiss, Legislative Advocate, representing Cantor G & W (Nevada):

[He read from prepared testimony ([Exhibit C](#)).] I appear in support of A.B. 471 as counsel for Cantor G & W, together with the company's Managing Director, Joe Asher.

Although the bill before you spans 13 pages, its core is found in provisions of the first 4 sections in the first 2 pages. In short, these provisions allow the gaming industry another way to keep up with technology with appropriate controls. They define mobile gaming and authorize the Nevada Gaming Commission to adopt regulations governing the manufacture, sale, and operation of mobile gaming systems on the premises of approved, nonrestricted licensees, provided the Gaming Commission first determines, pursuant to subsection 2 of Section 3 on page 2, that these systems are

secure and reliable, and provides reasonable assurance that players will be of lawful age and communicating only from areas of approved nonrestricted gaming establishments.

[Robert D. Faiss, continued.] The handheld devices allow patrons to play computer casino games in approved public areas within the casino premises. They operate only in those areas and will automatically shut off if taken anywhere else. Those approved areas do not include hotel rooms. With one exception, the sections that follow Section 4 are housekeeping in nature, to make mobile gaming fit within the established gaming control structure. They provide for testing and approval, manufacture, distribution and operation, licensing and taxation, and enforcement, the same as with slot machines and gaming devices. Mobile gaming does not include the Internet.

The one section that does not deal with mobile gaming is Section 21, which is on page 11. It increases the membership of the off-track pari-mutuel wagering committee. This is a request from the Nevada Pari-Mutuel Association and it will be presented by the attorney for that Association, Tony Cabot, after our presentation is complete. Joe Asher, other executives of his companies, and I have worked closely with the Gaming Control Board over a number of months to make sure that none of the provisions contained in A.B. 471 is in conflict with any position or policy of the Board or Commission. We also sought to ensure the product met the historic standards of Chairman Anderson for successful gaming legislation. Mr. Chairman, I hope that you've found that it meets your test.

This bill is necessary because the Gaming Commission made it clear there would be nothing undertaken in this area without policy guidance from you. Every provision in the bill was created in consultation with the Gaming Control Board. Chairman Neilander told us in the beginning that the Control Board would take no position on the policy question, but would help to make sure that the bill, if it is adopted, will contain the authority and clarity that the Control Board and Gaming Commission need to adopt regulations to regulate mobile gaming.

In a final review of A.B. 471 with Board representatives, we agreed that some provisions should be amended or added to clarify the bill and to enhance its effectiveness. Mr. Chairman, I have provided copies of those amendments to the Committee ([Exhibit C](#)). I trust

you will find that they are housekeeping in nature and do not effect the scope or intent of the bill as presently written. For example, the longest amendment at the end merely adds to NRS 465.070 that the prohibition against cheating includes mobile gaming.

[Robert D. Faiss, continued.] It is my privilege to introduce Joe Asher, whose name I believe is going to become well-known in Nevada over the coming years. One result of the success and development of the Nevada gaming industry has been new interests by companies who are leaders of other areas of finance and commerce. Joe Asher represents such a company. Bills such as A.B. 471 heighten that interest.

Mr. Asher is a key executive of Cantor Fitzgerald, which is one of the most respected companies in the United States and international commerce. Cantor Fitzgerald became part of the tragic history of September 11, when it was virtually killed as a company through the deaths of 658 of its employees on the top floors of One World Trade Center. That included every single person that was in the company's office at the time. The lasting story of Cantor Fitzgerald is not of that tragedy, but of the courage of its rebirth and its care of the surviving families of those lost employees. It is a story told in the book, entitled *On Top of the World*, a copy of which I leave, Mr. Chairman, for the Committee's library. The pages of that book tell of the determination of Chairman and CEO Howard Lutnick, and the surviving executives and outside professionals who were instrumental in that achievement. One of the group named in this book is Joe Asher. He will now tell you about the Cantor Fitzgerald of today, and why that company is interested in Nevada and A.B. 471.

Chairman Anderson:

Mr. Asher, it's a pleasure to welcome you to Nevada as a representative of Cantor Fitzgerald, which is responsible, in reading the book, for more than \$50 trillion dollars a year. More importantly, as a survivor of the September 11 disaster, which hit your corporation headquarters at the World Trade Center, and as one of the people directly responsible for the preparation of the individual affidavits of employment for your fellow workers, so that their surviving family members could settle those estates, showed a very personal involvement.

I'm sorry for the personal loss of those 635 people. The commitment and integrity of your firm, and that "I am them" attitude demonstrated in that book, shows a hope for your company and corporation, a hope that we as a state can

match. What Cantor Fitzgerald has demonstrated to the world, with the ability to re-establish your global electronic bond trading network by the morning of September 15, symbolizes that life goes on, and terrorism will not take over. Truly, sir, it's a personal honor to welcome you here today.

Joseph M. Asher, Managing Director, Cantor Fitzgerald, New York City, New York:

I wasn't fully prepared for Bob's kind remarks, and for yours as well. They're greatly appreciated. Though we come here today to continue on in development of new businesses, every single day we think back to our friends and colleagues that were lost that terrible Tuesday morning.

What brings me here today is the mobile gaming bill that Mr. Faiss spoke of. [He spoke from prepared remarks ([Exhibit D](#)).]

I am a Managing Director of Cantor Fitzgerald and several of its affiliates, one of which is newly formed and called Cantor G & W (Nevada), which of course stands for Gaming and Wagering. G & W intends to become a corporate citizen of this state. Frank Sinatra once said that if you can make it in New York, you can make it anywhere. We think that in the gaming world, if you can make it in Nevada, you can make it anywhere.

That's why we are focusing so heavily on developing and building a gaming business here. We support A.B. 471. I ask permission to spend a few minutes talking about our business and our companies so that you'll have some context. Then I'll explain what the bill would enable us and other companies to achieve in Nevada gaming.

Cantor Fitzgerald is a worldwide financial services firm which employs about 2,000 people in offices around the world. We are headquartered in New York City and have a major operation in London. We are engaged in a variety of market-based businesses, most famously in government bond brokerage, but we have substantial equities in debt capital markets businesses, and we are rapidly growing in the foreign exchange and investment banking areas.

Cantor has long been committed to developing and utilizing cutting-edge technology. The company has invested approximately \$400 million to date in technology and was the first to offer its customers fully-interactive electronic bond trading.

[Joseph M. Asher, continued.] In 1999, Cantor spun off eSpeed, which is our technology company and is now a publicly traded company. eSpeed is the technology behind our marketplaces. eSpeed offers real-time, reliable, secure execution of financial transactions. That gets to the heart of the matter, because fundamentally a \$100 bet on a football game or a \$10 hand of video poker is the same as a \$100 million bond trade. Fundamentally, it's all about the real-time, reliable, and secure execution of a financial transaction conducted in compliance with law.

In 2000 we obtained a bookmaker's permit and subsequently opened a book-making business in the United Kingdom, operating under the name Cantor Index. Cantor Index offers betting on everything from stocks to soccer games, all of which is, of course, legal in the U.K., and indeed we are regulated in that business by the Financial Services Authority, which is the equivalent in the U.K. of the S.E.C. [Securities and Exchange Commission]. We are great believers in mobile technology, just as electronic trading on computer screens has largely replaced voice brokerage in many parts of the stock and government bond businesses. Trading on mobile devices reduces the need for people to sit chained to their desks.

In September 2003, Cantor Index rolled out the first real-time mobile trading device anywhere in the world. We call it Cantor Mobile and it now represents a significant percentage of all of Cantor Index's trading. Indeed, we believe we have more experience than anyone else in providing wagering on mobile devices. Having successfully deployed mobile trading technology, we are aggressively seeking to expand the areas in which we offer it. That is what brings me before you today.

We want to offer regulated mobile gaming in Nevada in partnership with hotel casinos. We spoke to casino operators and confirmed our belief that there was commercial appetite for our technology. As Mr. Faiss mentioned, we have worked for quite some time with the Gaming Control Board to determine the path to this legislative session. Simply put, this bill would permit mobile gaming in certain areas of a nonrestricted license gaming establishment. What we propose to do is to offer casino games such as slots, poker, blackjack, or roulette on mobile devices such as tablet PCs, or pocket PCs, or PDAs like this one. These games would be offered

in public areas of a resort, such as the swimming pool, or the convention center, as approved by the Gaming Commission.

[Joseph M. Asher, continued.] The way it would work is that a customer would obtain a mobile gaming device from a location on the premises, such as the casino cage, showing proper identification and depositing money in an account. That amount would be credited to the customer's account and he or she could play games in the permitted areas. If the customer tried to play a game in a prohibited area on the premises, or tried to use one of the devices off-site, it simply would not work. When a customer is finished playing, he or she would simply return the device and withdraw the balance from the account.

What the bill is designed to do is utilize state-of-the-art technology to permit customers to play during what might otherwise be downtime, obviously with the goal of increasing casino revenues. We, Cantor G & W, would be the technology provider to the casinos, so we would be working in partnership with them. The devices would be treated as slot machines for tax purposes, meaning, as I understand it, \$330 per device per year plus the gross revenue license fee. There would be other economic benefits to the state as well from the new jobs that we would create, such as technical customer support and managerial employment opportunities.

There are several issues that often come up in discussions about new forms of gaming. Security, of course, is one; there are many security features that we can offer and we will work with the Gaming Control Board to make sure that they are comfortable with the features that we can have in place. Obviously we know a thing or two about security, as we trade over \$40 trillion per year on eSpeed. We will construct the networking devices so they can be used only in public areas of the property. If required, we can use a device such as the one I brought with me today, which has a biometric fingerprint reader so that I can use it, but someone else, such as a minor, cannot find it and use it.

Problem gaming is also an important concern. Unlike the current environment, gambling on mobile devices such as ours will allow bettors to be cut off after a certain amount of loss in a given time period. The reliability and redundancy of the technology is fundamentally important, and on that subject, we are in a class by

ourselves. As Chairman Anderson noted, eSpeed's core data center was on the 103rd floor of 1 World Trade Center and it was destroyed on that terrible Tuesday morning over three years ago. But despite the horrific loss of life, the eSpeed trading system itself never went down. It immediately switched to backup facilities located in New Jersey and in London and continued to operate.

[Joseph M. Asher, continued.] Shortly after the attacks the decision was made to shut down the system because of the situation, but the technology worked flawlessly, as it did when eSpeed re-opened the bond markets 47 hours later on September 13, and as it did 2 years later when New York City and much of the northeast lost power during the blackout.

If this bill is enacted, we will have to prove ourselves to many people: the Gaming Commission, the Gaming Control Board, our casino partners, and of course the gaming public. I'm confident that we will be able to exceed their expectations as we have been doing in our other businesses for many years. We are excited about the Nevada gaming industry. Apart from this legislation, we are pursuing other opportunities here and we are anxious to become a part of the Nevada gaming industry. We think we can make a positive contribution to the continued growth of the industry and we look forward to the opportunity to prove it.

Assemblyman Horne:

My question has two parts. First, you mentioned how the devices would not work, particularly off-premises. As we know, technology is always moving and there will be those out there who will be trying to overcome your security protocols. My hope is that you will have, or have currently, procedures in which you stay on top of this.

Joseph M. Asher:

I appreciate your comments, sir. Security is a very important issue to us. If someone could figure out a way to cheat in a \$100 million bond trade, they'd probably be trying to do it. I've seen TV specials on all the ways that people try to cheat in casinos; I'm quite familiar with that. Before a single bet is taken on one of our devices, we're going to have to prove its reliability and the security to the Gaming Control Board. I'm sure that Chairman Neilander and his colleagues are going to put the technology to the test. We're confident that we'll be able to meet that test.

Assemblyman Horne:

Secondly, did I misunderstand—would these be allowed in hotel rooms, or not?

Joseph M. Asher:

No, sir. We're looking to offer them in public areas of the facility. Hotel rooms are, by definition, nonpublic.

Chairman Anderson:

In addition, it's my understanding that, in the technology, you have to do a biometrical update to make sure the legitimacy of the person utilizing the equipment is constantly refreshed, so that you can't log on, buy it, and give it to your kid to play with out by the pool.

Joseph M. Asher:

Mr. Chairman, the technology exists on the biometric devices to require the user to re-establish his identity after a certain time period. If that is what the Gaming Commission and Gaming Control Board want us to do, that's what we'll do. We intend to work closely with them to figure out what exactly should be done to establish those security protocols, while at the same time making sure the devices can be used as intended.

Assemblyman Manendo:

You had said we're all concerned about problem gamblers. This Committee has been extremely concerned, and this legislative Body as well. You had mentioned that, at a certain point, there would be a shutdown if the player lost so much. What amount would that be? Has that been established yet?

Joseph M. Asher:

The bill does not define a limit. That would be something the Commission and Control Board would establish in the implementing regulations. There currently exists a limit for sports and race wagering on telephones; I think it's something in the neighborhood of \$2,200 per day. At least in my mind, that's something that would be reflected in the implementing regulations.

Assemblyman Manendo:

The other question was how many of the devices are going to be purchased initially? I think it's exciting that we're being creative, having an entrepreneurial spirit, and finding ways of having our customers happy.

Joseph M. Asher:

I don't have a specific number to give you. It's going to depend on what we think the commercial appetite would be, and what the casino operator believes would be appropriate for their given establishment.

Chairman Anderson:

It would be one of those questions that you don't know until the Board adopts the regulation, and then those industries are going to have to determine what their financial commitment is going to be to put your system in place. Is that a fair statement, the reason why we don't know?

Joseph M. Asher:

Yes, Mr. Chairman. Our business model is predicated upon the fact that our company is in a very strong financial condition, so we don't need to ask casino partners to put up the Cap X. The number of devices that would be utilized is fairly easy to come by. We can buy quite a few of them and whatever the marketplace would bear is something we would be happy to utilize. In large part, as you suggested, that's going to be driven by the regulations and the definition of the public areas where they can be used, and what we think the commercial appetite will be for the devices once we get to that stage where we're ready to go live with them.

Chairman Anderson:

Are you satisfied, Mr. Manendo?

Assemblyman Manendo:

Yes, thank you, Mr. Chairman. I was interested to know about how much these devices run.

Joseph M. Asher:

As with anything, if you buy them in bulk, you can get a better deal. These are about \$500 off the shelf.

Robert D. Faiss:

Mr. Chairman, your remarks show our clear understanding that the Committee is leaving important decisions to the Board and Commission to approach it after the most careful study. I think the Commission and the Board have demonstrated, in their hearings over the past year, the care that they take to make sure that they answer the question, such as where it's going to be. The Board says it is going to be limited to nonrestricted casinos, but it is not going to be in hotels rooms, not going to be in restricted locations. You're giving them the authority to make sure where it is going to be only after exacting standards are met, and we know that this is a very rigorous test before you. It becomes

no less rigorous to demonstrate that the devices can be trusted in every respect, and that every decision made has the background behind it to justify it.

Assemblywoman Buckley:

I'm supportive of the bill, and I think the technology is exciting. I have much less concern than I did with the Internet gaming proposal, because I think that, with either the fingerprint technology, the restriction and location, you'd ease a lot of those concerns.

Having gone through the Internet gaming legislation and the subsequent regulatory hearings on the matter, could you compare and contrast the security, reliability, and underage gaming in comparison to that which we did for Internet gaming?

Joseph M. Asher:

There are key differences between the two. The first is that, to get the device, you have to go to the casino cage and present your driver's license to obtain the device. One very fundamental difference is that allowing people to use these devices on the premises of a resort is a situation in which they have come to the resort for the purpose of gambling, whereas on the Internet you're bringing the game to them in their homes. I see that as a very fundamental difference between the two.

Chairman Anderson:

I think Ms. Buckley's question may be directed relative to the Board regulation and may be more appropriate for the Gaming Control folks when they come up toward the end. Do you perceive this process to be any more difficult for this particular operation than it was for the Internet system that we were all so very hopeful for?

Robert D. Faiss:

You're correct, Mr. Chairman, it's a question that is properly directed to Chairman Neilander. A simple answer is this is much less difficult. It does not have the legal barriers which the Gaming Commission had to deal with. There's no legal reason, once you pass the bill, that it could not be implemented by the Commission.

Assemblywoman Ohrenschall:

I support the bill too, and I think this is a wonderful step we're taking. I wonder if you'd want, for the record, to clarify more the areas that one can take the device to or not. For instance, I asked the question yesterday in talking with someone, why would a guest not be allowed to take the device to his room? The response was made that, because of the privacy of the room, one could not

monitor the use of the device appropriately. Is there any other rule that determines where the guest can or cannot take the device?

Robert D. Faiss:

The reason that the rooms are not in there is that's a question that has been raised by both the Board and Commission, so it's taken out of the equation. The areas, apart from the casino but where these are suitable, will be determined only after hearings by the Commission. We're going to make presentations that certain areas as mentioned are among those suitable.

Assemblywoman Ohrenschall:

So my question is premature. Thank you, you've clarified it.

Chairman Anderson:

Generally speaking, we don't deal with those legislatively. We have always tried to leave that to the prerogative of the Gaming Control Board, so they can have the authority to recognize the changing nature of the industry itself. We're very clear in our own minds that those parameters which have already been set up are well established by the Board. We don't anticipate they're going to be doing something dramatically different here in treatment of a firm that has the reputation of Cantor Fitzgerald. We want to keep the integrity of Nevada gaming where it is, and we're respectful of Cantor Fitzgerald's own reputation.

Assemblywoman Gerhardt:

For the record, we are not going to see this in grocery stores. This is only going to be limited to resorts. Is that correct?

Robert D. Faiss:

That is correct. It is limited to nonrestricted casinos.

Chairman Anderson:

It's our understanding at this particular point in time that the Gaming Control Board is viewing this to be with limited jurisdiction. Those specific, larger gaming resorts would have the ability to provide the security of the system for gaming purposes.

Dennis Neilander, Chairman, State of Nevada Gaming Control Board:

I have with me today Board member Mark Clayton. Mr. Clayton is new to the Board, and I wanted to bring him today to introduce him to you. You'll be seeing him from time to time testifying in front of you in various committees.

Mr. Chairman, I don't have any prepared remarks today but a quick take on the Board's and Commission's view of this particular topic. We held a number of

hearings over the last biennium as different technology providers and operators had approached us with various concepts, which we are now calling "mobile gaming." At the time we held these hearings, the Nevada Gaming Commission provided guidance to the Board; in respect to the public policy issues, they decided the traditional gaming statutes didn't recognize this kind of activity. While we had discussion about whether the inactive gaming provisions, which were designed to address Internet gaming, could also be used for this, after further analysis we determined there needed to be both legislative amendments to the statutes as well as guidance from this Legislature as to whether this, as a policy matter, is something that you wanted us to allow and to regulate.

[Dennis Neilander, continued.] Cantor is one company that is interested in this. There are others, and we decided that we would take a neutral position on the policy question so that you can make that determination. In that process, we also reviewed draft language and had several meetings to try to make sure that, should this Body decide this is a correct policy that they want us to go forward with, we can properly regulate it. The result is what you see in the bill, including the amendments that Mr. Faiss presented today.

Along those lines, I would say that the policy question is one for this Body to decide. In the Commission hearings, we said that we would, as we always do, approach this cautiously. The words the Commissioners used on several occasions were "baby steps," and perhaps in its initial run, we would approach this cautiously. My people in the lab are excited to review the technology. We're not concerned that we won't be able to meet the section of the bill that requires us to make a determination that the technology is secure and reliable. We can do that, and we are prepared to do that, as we do with other gaming devices and other kinds of technology.

The bill as written does make reference to further definition of what is a public area. Should you decide that the policy question is okay, we would further define what is a public area, and I do have a very short amendment that we would like you to consider. I'll provide it to Ms. Combs. All it does is make it clear that the Commission could further define what the public area is. I think all the parties agree to that [amendment]. I think it just should be further stated, and I'll provide that amendment to you. [Mr. Neilander did not submit an amendment.]

A question has arisen already that I think I should respond to. The bill, as amended, would make this available only in nonrestricted gaming areas. By definition, nonrestricted gaming areas include any gaming area or licensed area that has greater than 15 slot machines or table games. There are a few nonrestricted gaming licenses that have been issued to grocery stores and other

locations that may have, for example, 22 slot machines, or 30 slot machines. I think we need to clarify that, as a matter of policy, it is probably not an appropriate place for mobile gaming. There are a number of ways to address it. We can pick a number of slot machines that it has to be in excess of, et cetera. Mr. Clayton and I are available to respond to any questions that you might have.

Chairman Anderson:

Time is of the essence, Mr. Neilander. Everything must be out of this Body by next Friday, April 15, or it dies. I presume the amendments you're looking at are not going to be substantive in nature, so we can get this quickly through. I appreciate the response, because I was under the impression that we already had a narrower profile to Ms. Gerhardt's question.

Dennis Neilander:

Based on the comments that we've heard today, we will prepare an amendment which will be one line, and I will give it to Ms. Combs as soon as this hearing is over. I've already drafted it, but I wanted to get that confirmation from the Committee that it's the policy direction you wanted to go, and that it's worthy of your consideration. I will include that.

Chairman Anderson:

Let me see if it's not just the Chairman's understanding, but the understanding of the Committee as a whole, that if we are to take this up, we would want it more narrowly limited. We would also want it clearly defined that the Gaming Commission is going to define the areas so that they are publicly accessed areas.

Assemblyman Carpenter:

Mr. Neilander, will you explain to me, for someone who doesn't understand technology at all, would you be playing with a game that's in the casino, or is all of the game in this little device that's going to be held by someone?

Dennis Neilander:

Picture a slot machine, take the buttons off it, and put it in that little hand-held thing. That's what you're going to have and that's your mobile device. From a technology point of view, in a wireless setting this would work off of a satellite, for example. The transmission would be coming via satellite back to a server, which would be in back of the licensed gaming establishment, and within that server there would be a random number generator. That random number generator is what's determining win or loss. That's where we're going to focus a lot of our attention. It is done via a satellite under some circumstances, if it's wireless, or it can be done through certain wired technology.

[Dennis Neilander, continued.] It's the method of transmitting the wager and the information back and forth between the hardware and the software. With the GPS (Global Positioning Satellite) now, and this is something we'll be testing very thoroughly, there is something called triangulation where you have additional satellites involved. We believe the technology is there and that device can identify, within the specificity that the law and the regulations require, where it can function and where it can't. For example, Mr. Carpenter, when you put that device in your saddle bag, it will shut off. We will make sure that does work, or we will not approve it.

Mr. Chairman, I should add on the issue about hotel rooms. Within that definition of what is a public place, that's very critical. As you know, the public policy of the State of Nevada is that all gaming be conducted in public places, open and available to the public. The Legislature is the only body that can make an exception to that public policy. You've only chosen to do so in a few very narrow instances.

In this case, you're not being asked to amend that public policy because, again, this would have to be open to the public. Hotel rooms, by their very nature, are not. That's why we've excluded them specifically in this statute, which we did with the private gaming salons. That was something that this Legislature determined already would not be appropriate. We've tried to embody that in the existing bill.

Assemblyman Mabey:

I'm curious how many people have approached you to do a mobile device like this, how many other companies?

Dennis Neilander:

We've been approached by several companies, and every company has a different idea. What we want to make sure of, with this legislation and the ensuing regulations, is that we're not favoring anybody's particular method of technology. We're going to set standards where those are generic, and people will come up with different ways to meet those standards. There have been several companies, some interested in casino-style gaming, some interested in race and sports books, some interested in pari-mutuel, and some interested in things that are associated with the games.

How do you transmit financial data? How do you transmit credit issuances? How do you relay information in respect to making sure the games are compliant with regulations regarding hold percentages? There are a lot of different ways to use a generic term "mobile" that are associated with gaming. We've had several companies ask us about this, especially with respect to

casino-style gaming. We had discussions with the Nevada Gaming Commission, and it was just enough outside of what our normal scope is that we felt it would be appropriate to get legislative guidance on that issue before we were to go forward.

Mark A. Clayton, Esq., Board Member, State of Nevada Gaming Control Board:

Obviously, the Chairman has done an excellent job, so I will close my remarks with that.

Scott Scherer, Legislative Advocate, representing Diamond I Technologies, Inc.:

Diamond I is one of those companies that also offers a wireless mobile gaming system. Theirs is Wi-Fi-based, and since wireless gaming systems are not currently permitted, they are not currently licensed in the state of Nevada, but hope to be if this bill is approved. I will try to be brief. Diamond I also uses biometrics to ensure that the person playing the device is the same person who registered in the casino, and showed their identification as a fact of age. They're seeking to operate their system in other jurisdictions, which brings me to one of the key reasons to support this bill. With the expansion of gaming in other jurisdictions, including Indian gaming, it's important to ensure that both the Board and the Commission have the tools they need to keep Nevada gaming at the forefront of the gaming industry, while at the same time ensuring the security, reliability, and, most importantly, the integrity of gaming devices in systems.

We believe that this bill will accomplish that, and we are supportive of the bill. We know that Nevada visitors are spending less time on the casino floor itself, and more time going to shows, shopping, and doing other things. We think that's a good development generally, and this will provide greater convenience to the Nevada visitors to be able to do the things that they enjoy and hopefully keep them coming back and contributing to our economy. You had mentioned earlier that you wanted to make sure, on one of the other bills, that everyone was playing with the same deck of cards. I wanted to clarify that you are not going to put Chairman Neilander out of a job, because I believe that is his responsibility. I'd be happy to answer any questions that you may have.

Assemblyman Carpenter:

On page 2, Section 3, it says "the Commission may, with the advice and assistance of the Board,"—explain the relationship between the Commission and the Board. I thought you were separate entities, and I was curious what this might mean.

Dennis Neilander:

Within the context of the bill, what that means is that the Nevada Gaming Commission is more the policy arm of the regulatory body. We are separate and independent bodies. The Nevada Gaming Control Board has been charged with the day-to-day enforcement of the gaming laws. The Nevada Gaming Commission has the sole authority for the adoption of regulations.

The way that process works is that the Board will generally do the ground work for the Commission and develop a draft regulation for them. We will present that to the Commission. It is then that the Commission separately deliberates and has their own hearings, and ultimately they have the final authority to adopt the regulation and whatever in particular is in the regulation. That is their sole function, separate and apart from ours, but we do assist them in that regard.

Chairman Anderson:

Of course there's that other group that hardly ever meets, only to be called by the Governor.

Dennis Neilander:

That would be the Gaming Policy Committee, of which you and I are both members. That particular Committee has not been called, I believe, since Senator Bryan was Governor.

Chairman Anderson:

There is this extra little codicil in here we need to deal with. Let me draw the attention of the Committee to the amendment to Section 21 of A.B. 471 ([Exhibit E](#)).

Anthony N. Cabot, Legislative Representative, Nevada Pari-mutuel Association:

I'm the attorney for the Nevada Pari-mutuel Association. The Nevada Pari-mutuel Association is made up of all 75 licensed race books that offer pari-mutuel wagering in the state of Nevada. I'm here to talk about a very mundane thing, Section 21 of this bill, which concerns something we call the Rate Committee. The Rate Committee is a state-sanctioned committee that has the exclusive authority to negotiate track fees with tracks to allow our Nevada race books to commingle our pools with the track's pools, basically to place pari-mutuel bets on those races at those tracks.

The Committee was formed in 1979 and had 3 different sets of members. It had 9 members all together, and they fell into 3 categories. The first category was 5 members that were from a list nominated by the state's largest gaming association; the second was 2 members from what were considered smaller

books, based on their gross revenues; and 2 at-large members. What we're here today to ask for is to expand the Committee from 9 members to 11 members.

[Anthony N. Cabot, continued.] Why do we need 11 members, as opposed to 9? Because in 1997 when this bill was passed, we only had about 30 race books in the state of Nevada that were offering pari-mutuel wagering. Today we're up to 75, and that expansion of the number of pari-mutuel books has resulted in a greater interest by members of that community to serve on the committee. We felt that 11 is a workable number. It is a number that would satisfy those who want to sit on the board. What we're proposing, by virtue of the amendment we passed out, is an 11-member committee, with 5 from the largest association of gaming establishments, 3 from the smaller books, and 3 at-large. We added 1 in each of the last 2 categories; 1 from the smaller books and 1 from the at-large categories.

Chairman Anderson:

You're suggesting on page 12 that we only go from 2 to 3, and in (b), 2 members go to 3 members based upon the preceding year's paid gross revenue. You're just moving them around. You're still going to increase your total numbers by 2; 1 in one category and 1 in the other. The sole basis for this request is the fact that you've gone from 4 to 75?

Anthony N. Cabot:

We've gone from about 30, when this bill was initially passed, to about 75 today.

Chairman Anderson:

You've gone from 30 to 75, so you more than doubled in 10 years.

William Bible, President, Nevada Resort Association:

I didn't intend to address this particular bill. I just met Mr. Asher yesterday, and we're starting to understand the concepts at this point. We really have not formulated a position on the bill. I did, however, follow your discussion as to where it would be appropriate for this technology to be deployed, should this bill be approved. I would agree with the comments of the Committee that it would not be appropriate to have it in some of the nonrestricted supermarkets and perhaps slots-only locations. We'll work with Mr. Neilander on that amendment. I would suggest that you limit it to places where you have table games displayed.

Chairman Anderson:

I'm sure Mr. Neilander has something in mind already.

Jeff Siri, Chief Executive Officer and President, Club Cal Neva, Reno, Nevada:

We are a medium-sized casino in northern Nevada. On top of that, we also operate 20 race and sports books throughout the state of Nevada. This is soon to be 22, and with further approval from the Commission, we hope to have 24 before the start of this next football season.

I'm here to speak in support of this mobile gaming. I think the gaming industry is truly an entertainment service business, and service means providing fast, efficient, and friendly service to customers. These devices will allow us to do that. We will be able to give our customers immediate service at their discretion, when they want to do it, not at ours. If we can do that, especially with the controls that will certainly be implemented and required by the Nevada Gaming Control Board and the Commission, these devices will allow us to further provide good service, and be leaders in the gaming industry, not only in Nevada but also in the world economy that we're currently competing in. Again, I am here to support the bill, and to answer any questions.

Dennis Neilander:

I wanted to throw this language out to you while the Committee is still here. What I'm looking at is amending Section 2, page 1, line 5, which makes reference in the amendment to an establishment holding a nonrestricted license. We would add the amendatory language, "and operates at least 100 slot machines and at least one table game." If we get both, that will eliminate the grocery stores and things that may be of concern. Also, by requiring that there is at least one table game, generally once you have that environment there are certain internal controls that kick in regarding surveillance and other matters. It does become a more secure environment. That's what I'll include in the amendment to your staff.

Chairman Anderson:

I think that takes care of Ms. Buckley's and Ms. Gerhardt's concerns relative to where we're going in gaming. I think it also meets the spirit of what we were all trying to aim for in terms of this particular type of legislation. Is there anyone else needing to be heard on A.B. 471? Let me take A.B. 471 back to Committee. It appears we have all the amendments in front of us. I have no problem putting it over to a work session, if we all understand that these are going to be conceptual ideas that are going to be put in front of us. I think we're okay to go, but I don't want anybody to feel that we're under restraint here, because we're not. We've got until next Friday.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 471 WITH AMENDMENTS PRESENTED IN WRITTEN DOCUMENTS, AND VERBALLY BY DENNIS NEILANDER.

ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

[Chairman Anderson, continued.] I want to make sure that we have an opportunity to review this last piece of legislation. Let's turn our attention to A.B. 485.

**Assembly Bill 485: Revises provisions governing gaming establishments.
(BDR 41-1376)**

William Bible, President, Nevada Resort Association:

I'm appearing on behalf of A.B. 485. With me is Mike Alonso from the Jones Vargas law firm to explain and walk you through the bill, because it is a fairly complicated measure.

This particular piece of legislation amends two provisions that were placed in the [*Nevada Revised Statutes*] in the 1990s. One occurred in 1995 in A.B. 532 of the 68th Legislative Session, which was Majority Leader Buckley's legislation. This created an exception to the resort hotel room requirements for nonrestricted gaming properties which were displaced through redevelopment actions.

An additional amendment occurred in S.B. [318] of the 69th Legislative Session in 1997 which permitted the Gaming Control Board to administratively approve the transfer of gaming licenses between locations in certain circumstances. Under provisions of this particular legislation, a licensee was not required to either be relicensed or to meet the room requirements that existed in the statutes at that time.

Since that time there have been some transfers, principally in northern Nevada, that have generated considerable controversy. These particular sections have been discussed substantially in the legal community and amongst licensees, about the implications and the policy provisions of these particular statutes. A.B. 485, which is before you today, is the result of many meetings between the Resort Association's members, principally in northern Nevada, and is

intended to clarify the transfer process and to provide greater understanding of that process.

[William Bible, continued.] Harrah's, through Phil Satre and its representatives, through the Gaming Association, and through Mr. Alonso, was one of the driving forces in these negotiations. I'll ask Mike to walk you through the provisions of the bill and explain how it changes existing law, so you'll have a clear understanding of the provisions.

Chairman Anderson:

Mr. Bible, we appreciate your work on A.B. 485, which I know was trying to clarify provisions that currently exist in Clark County so that they now apply to Washoe County, and to clearly state where we're all heading relative to this issue.

Michael G. Alonso, Legislative Advocate, representing Harrah's Entertainment, Inc.:

It's my pleasure to be in front of you today and walk you through A.B. 485. As Mr. Bible stated, there are two statutes that we are attempting to amend through this piece of legislation. In *Nevada Revised Statutes* 463.1605, which backed the Majority Leader's bill in 1995 and authorized the Gaming Commission to have the ability to issue a nonrestricted license for a nonresort hotel that was taken through eminent domain in a redevelopment project, there was no geographical limitation put in there at that time. In Section 1 of the bill, new language would create a cut-off with a date of January 1, 2005, so for any properties taken before January 1, 2005, this would not have retroactive application. Those that have not been taken on or after January 1, 2005, would be limited to staying in the redevelopment area. That's the only change we're making to NRS 463.1605.

Section 2 covers NRS 463.302, which is the transfer statute. Again there's a distinction made between condemnations before January 1, 2005, and that is intended to pick up the two properties that were condemned for the ReTRAC [Reno Transportation Rail Access Corridor] project and not retroactively affect those. They were condemned under the existing law, so we're not trying to affect those two properties.

There are two parts to Section 2, NRS 463.302 under the current statute. Under A, a property—a nonresort hotel—can voluntarily move within a redevelopment area if it gets approval from the Gaming Control Board and it meets all local land-use requirements. We decided that we were not going to change that for Washoe County, so we would continue to allow those voluntary

moves to occur. Under B, if you were condemned, then you were able to move outside of the redevelopment area.

[Michael G. Alonso, continued.] What we've done through this legislation is that, in Washoe County, you would no longer be able to do that after January 1, 2005. If you're condemned, you won't be able to move outside—you would presumably get paid just compensation for your property, but if you wanted to have a casino, you'd have to go through the process and live with the statutory framework that's currently in place for resort hotels. You'd have to build the hotel rooms.

The other change is in subsection 4. Going back to 1997 when NRS 463.302 was enacted by the Legislature, the City of Las Vegas came in and requested an amendment which was put in the statute in 4(b), that the City of Las Vegas had gaming enterprise districts that weren't necessarily coterminous with the development area. They requested they be taken out of the bill. NRS 463.302 did not apply to the City of Las Vegas at all; it has not applied since 1997. We have been requested to put in the bold language you see there, "county or town", so it would pick up Clark County and any other governmental entity that has gaming enterprise districts. That's predominantly in Clark County and Las Vegas.

This is not intended to apply to the two locations that were condemned previously. That process was done, and they have to find a home. They'll have to deal with local government to get all those land-use approvals and go back to the Gaming Control Board for authority to transfer those licenses under the existing law. This is a prospective piece of legislation. I do have a technical amendment that I passed out ([Exhibit F](#)). The language would be the green language.

This was prompted by an opinion from the City Attorney's office in Reno. There's a distinction made between NRS 463.1605 and NRS 463.302. NRS 463.1605 talks about a redevelopment project and redevelopment area, pursuant to NRS 279.382 to 279.685. NRS 463.302 talks about a redevelopment zone, and unfortunately, redevelopment zone is not defined anywhere in statute. I was prompted by the city attorney's opinion which pointed out that they had no understanding of what a redevelopment zone was, because it wasn't defined. We should take care of this through the green language; it would change "zone" to "a redevelopment area created pursuant to NRS 279.382 to 279.685," to keep those two consistent.

The other amendment that I would like to propose, which I don't have written down, was based on a conversation with the Majority Leader yesterday.

Section 3 of the bill has an effective date of "upon passage and approval," and applies retroactively to January 1, 2005. I think it makes it clear, in Sections 1 and 2, that we're making a distinction between properties that were condemned prior to January 1 of 2005, and those that have not been condemned. I don't think we need the retroactive language in Section 3. I propose that the language read, "This act becomes effective upon passage and approval."

Chairman Anderson:

I believe we don't need the retroactive language that applies to January 1, 2005, if you feel that language can be struck.

Michael G. Alonso:

That's correct, Mr. Chairman.

Chairman Anderson:

Let me ask Legal.

René Yeckley, Committee Counsel:

I think that proposed amendment would be fine, if that's the Committee's pleasure.

Chairman Anderson:

This, of course, is suggested language. The actual verbiage is selected by the Legal Division. You all have learned that we don't get to be wordsmiths.

Michael G. Alonso:

I want to point out one other issue from the bill. It is kind of convoluted language, because we're doing different things in different places, but the intent was not to affect rural counties at all. NRS 463.302(a) and NRS 463.302(b) would still be available in the rural counties. They could move within their jurisdiction, subject to approval of the local governing body and the Gaming Control Board.

Chairman Anderson:

What we're doing is for those properties in the future, where apparently in Washoe County there are only the two affected properties. I presume in Clark County there may be a similar property, or is there not?

Michael G. Alonso:

My understanding is there could be properties in Clark County, but none of them to my knowledge have been condemned before January 1, 2005, so effectively it wouldn't happen in Clark County.

Chairman Anderson:

We're trying to put up a little wall of protection for those people who might be concerned about policy. Is there anybody else wishing to speak in support of A.B. 485, to get it on the record?

Leif Reid, Attorney, Legislative Advocate, representing Town Club, Inc., owned by Nevada Casinos, Inc.:

I have a brief written statement that I would like to be appended to the record ([Exhibit G](#)).

Chairman Anderson:

Mr. Reid, you are in support of the piece of legislation?

Leif Reid:

Yes, sir.

Chairman Anderson:

There are no suggested amendments in there, Mr. Reid?

Leif Reid:

There are none. Just to clarify, Town Club, Inc. is the entity that operated the Old Reno Casino until it was condemned last year by the City of Reno.

Jeff Siri, Chief Executive Officer and President, Club Cal Neva, Reno, Nevada:

I am in support of the bill as it is currently written, with the amendment that was proposed by Mr. Alonso earlier. Without going into a lot of history, I'd like to express my support for the bill.

Chairman Anderson:

Let me close the hearing on A.B. 485. Does anyone have any issues on the bill? What is the comfort level of the Committee?

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 485 WITH THE AMENDMENT BEING THE REMOVAL OF THE JANUARY 1, 2005 DATE AND MAKING IT EFFECTIVE UPON PASSAGE AND APPROVAL; AND WITH THE TECHNICAL AMENDMENT THAT CLARIFIES THE ZONE VERSUS AREA OF DEVELOPMENT.

Assemblywoman Buckley:

I just want to make it clear that the January 1, 2005 date is also utilized in B and C, as well as in Section 3; that would be removed as well. Is there a problem with removing it there?

Chairman Anderson:

I thought it was necessary to leave it in those other places.

René Yeckley:

I was under the impression we were just taking it out of the effective date section and leaving it in the statute so that it was clear when the final orders were entered and how those provisions were going to apply, whether it was entered on or after January 1, 2005 or before January 1, 2005.

Assemblywoman Buckley:

Could I get a clarification from Mr. Alonso on what the legal difference is between those two? Ever since the Tailhook case, I've been very leery of retroactive legislation.

Michael G. Alonso:

The reason that distinction is in there is because the two licenses that have been condemned, prior to January 1, 2005, still haven't been transferred. They're still in the process of trying to obtain all approvals necessary under the existing law to find a home. Both of the other speakers who support the bill support it with the language that cuts off after January, so the effects of the bill would only kick in after January 1, 2005. It's an arbitrary date, but it was far enough out to pick up those two licenses that were condemned by the City of Reno. The final orders of condemnation occurred before January 1, 2005.

Assemblywoman Buckley:

Why couldn't it be July 1, 2005?

Michael G. Alonso:

It could be July 1, 2005.

Assemblywoman Buckley:

I just hate having past dates in the legislation. People wonder if we're trying to affect something or change the rules in the middle of the game. I'd be more comfortable if it was July 1, 2005, as long as it doesn't change anything.

Michael G. Alonso:

It could be upon passage and approval. I don't think, given the controversy that's happened up in northern Nevada; that the city councils of Reno or Sparks are going to condemn licenses between now and the effective date of this act. That was a date that was given to us which was acceptable to the two licensees that had been condemned. It could be effective upon passage and approval, or July 1.

Assemblywoman Buckley:

So we're talking about B and C in Section 2, as well as Section 3, just to be very clear.

William Bible:

We do need a date in there, and we don't have any knowledge of any condemnations that have occurred since the date that you see there. You need a date in that section of the code, and it could be the same date, on passage and approval, and that would be fine.

Assemblywoman Buckley:

So whatever Legal would come up with, maybe July 1, 2005 for all of them, because I don't know if you can go back on "passage and approval" and insert the date.

René Yeckley:

I think I understand Ms. Buckley's intent that we're not indicating this applies retroactively, and instead pick a date of July 1, 2005, and make that bill effective in accordance with that date.

William Bible:

Or you could make that language read "after the effective date of this act," and then it could affect it from passage and approval.

Assemblywoman Buckley:

Thanks for the clarification.

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 485 WITH THE AMENDMENT MAKING IT
EFFECTIVE UPON PASSAGE AND APPROVAL, AND WITH THE
TECHNICAL AMENDMENT CLARIFYING ZONE VERSUS AREA OF
REDEVELOPMENT.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:

Let me indicate to the members of the Committee that we're not going to work session today given some of the other issues we're dealing with. [Chairman Anderson gave a status report on bills currently in Committee. The meeting was adjourned at 11:17 a.m.]

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

Victoria Thompson
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 8, 2005

Time of Meeting: 8:13 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	Committee	Agenda
AB 329	B	Speaker Perkins	Amendment
AB 471	C	Robert D. Faiss	Testimony
AB 471	D	Joseph M. Asher	Testimony
AB 471	E	Anthony N. Cabot	Amendment
AB 485	F	Michael G. Alonso	Amendment
AB 485	G	Leif Reid	Statement