MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
April 12, 2005

The Committee on Judiciary was called to order at 8:19 a.m., on Tuesday, April 12, 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 Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

Risa Lang, Committee Counsel
Jane Oliver, Committee Attaché

OTHERS PRESENT:

Jennifer Henry, Discover/Guardianship Commissioner, Eighth Judicial District Court of Nevada
Dara Goldsmith, Attorney, Goldsmith and Guymon, Las Vegas, Nevada
Shelley Krohn, Private Citizen, Las Vegas, Nevada
Kathleen Delaney, Deputy Attorney General, Office of the Attorney General, State of Nevada
Ann Price McCarthy, President, State Bar of Nevada
David Clark, Assistant Bar Counsel, State Bar of Nevada
Eva Garcia-Mendoza, Attorney and Counselor at Law, Las Vegas, Nevada
Patricia Morse Jarman, Commissioner, Consumer Affairs Division, Nevada Department of Business and Industry
Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and representing the Nevada Sheriffs' and Chiefs' Association
Harry Dixon, Sheriff's Deputy, Washoe County Sheriff's Office, Nevada
Gary Peck, Executive Director, American Civil Liberties Union of Nevada
Fritz Schlottman, Administrator, Division of Offender Management, Nevada Department of Corrections
GeorgeAnn Rice, Associate Superintendent, Human Resources, Clark County School District, Nevada
Christina Dugan, Director, Government Affairs, Las Vegas Chamber of Commerce, Nevada
James Jackson, Legislative Advocate, representing Nevada State Education Association, Las Vegas, Nevada

Chairman Anderson:
[Called the meeting to order and roll called.]

Assembly Bill 551: Makes various changes concerning guardianships. (BDR 13-434)

Jennifer Henry, Discover/Guardianship Commissioner, Eighth Judicial District Court of Nevada:
I'll remind Chairman Anderson and the Committee members that last Legislative session, Chapter 159 of *Nevada Revised Statutes* (NRS), which is the provisions that govern guardianships, were substantially rewritten.

Assembly Bill 551 is intended to be a clean-up and clarification bill for some of the problems identified after the court and practitioners actually started working with the newly revised and enacted statutes.

[Jennifer Henry, continued.] I sent a letter (Exhibit B) yesterday to the Chairman and the Committee members, and I hope that you've all received it. Attached to that faxed letter is a list of suggested changes to A.B. 551 (Exhibit B).

I don't know if the Chairman and the Committee members would like me to go through the bill, provision by provision, but I think it's a procedural change to the problems that were identified after using the newly enacted legislation from the last session. [Read from Exhibit B.]

> The only thing that I would deem as something other than procedural, would be Sections 6 through 10, which are importing the prudent investor rule into Chapter 159 [of *Nevada Revised Statutes*].
>
> The wisdom in doing that would be if a guardian chooses to invest in the market in non-federally-backed security investment vehicles, then they should be bound to the prudent investor rule, which is found in the trust provisions of the *Nevada Revised Statutes*.
>
> Other than that, the sections are pretty benign. They are basically procedural clean-up provisions. When I got the bill from LCB [Legislative Counsel Bureau], I did find some errors in the way that it was drafted that might cause some problems, so I've made some suggested amendments, which are contained in the letter, section by section, as well as the list that I've attached (Exhibit B) to the back for your ease of use.

Chairman Anderson:
I would point out, Ms. Henry, that it's customary in drafting legislation that we try to be consistent with *Nevada Revised Statutes*.

Jennifer Henry:
Yes, but my point, Chairman, is that the intent of the bill is sort of being lost with some of the things that were left out, so I've suggested modifying the language that's there.

Chairman Anderson:
Do you want to take us through what you perceive is the intent? I have a summary that they've done for me. Why don't you tell us what you perceive or

what you were hoping to accomplish, with your redraft and suggested language.

Jennifer Henry:
Can I inquire as to whether or not my letter has been received by the members of the Committee?

Chairman Anderson:
Yes, it has.

Jennifer Henry:
[Continued reading from prepared testimony Exhibit B.] Section 2 of A.B. 551 incorporates more individuals who should be entitled to notification of the initiation and administration of a guardianship proceeding. When I say administration, those are subsequent petitions that are filed after the guardianship has been granted.

I think the provision is wonderful the way it was written, with the exception of the fact that a larger committee of southern attorneys got together and decided that the trustee provision needs to be expanded to include a "trustee of a trust in which the proposed ward or ward is a grantor or income beneficiary." That takes into consideration that the court needs to know that if somebody is an income beneficiary of an irrevocable trust, they're not the grantor and we need to know what's going on, and that trustee should also be included in some of the proceedings that are being held in court.

Section 3 is a new provision that's being suggested to curtail the initiation of frivolous guardianship cases, by imposing fees after the appropriate hearing by the court officer, to make the determination whether or not the action was brought in good faith. We've had some unfortunate circumstances where guardianships are being used as vehicles to get around other civil lawsuits that are going on, when there really wasn't the cause, and they didn't meet the definition of incompetency or incapacitation to need a guardian, so we're hoping that this will be something that the court can use to import a Rule 11-type sanction into Chapter 159 of NRS.

Chapter 159 of NRS is a standalone provision, and it would be beneficial to have that chapter be even further complete by the importation of an equivalent of a Rule 11 into Section 3.

Section 4 is meant to streamline the use of a citation.

Vice Chairman Horne:
Before you go on, to help the Committee out you'll need to explain things like Rule 11 sanctions that are provided. The Committee may not know what that is.

Jennifer Henry:
[Continued speaking from prepared testimony Exhibit B.] Rule 11 is a Nevada Revised Civil Procedural Rule that allows a court or a judge to impose sanctions upon an attorney and the litigant if the facts are appropriate and if an action is not brought in good faith, and there's not sufficient research regarding the cause of action behind the need to initiate a lawsuit. That's what Rule 11 would be about. We're asking that an equivalent to that be put into Section 3.

Section 4 of the bill is meant to streamline the use of a citation. In guardianship proceedings there are two types of notification of a hearing; a citation and a notice. A citation is a little more rigorous in what is required of service and notification of an individual. It's usually used in conjunction with starting a guardianship, changing a guardian, or terminating a guardianship. Or, if you were to cite somebody into, say, trying title to property, the persons that may be affected adversely by the courts action, are entitled to a citation.

We have found that throughout Chapter 159 of NRS, after the last legislative rewrite, there were some discrepancies between and among the provisions that used citations. Some of the different provisions had contained within NRS statute different ways of service, so we wanted to make sure that there was a uniform method of serving a citation when it is the preferred method for notification of a hearing. That's what Section 4 would do.

In Section 5 we are asking that the guardian of a person be held to the same standard as a guardian of the estate, if the guardian wishes to move the domicile or residence of the ward outside the state of Nevada. Right now, we only have that duty imposed upon the guardian of the estate, which seems a little illogical because it's actually the guardian of the person who makes the decision, in conjunction with the guardian of the estate, where the ward shall reside.

[Jennifer Henry, continued.] In Sections 6 through 10 of the bill is the importation of the prudent investor rule, which I had previously touched upon. That rule is currently found in Chapter 162 of *Nevada Revised Statutes*. Chapter 162 [of NRS] governs trusts. So there is no misunderstanding, we would like to import the applicable provisions of the prudent investor rule into Chapter 159 [of NRS], to make sure that Chapter 159 [of NRS] is complete unto itself.

It is the intent of the bill's authors, myself, and Ms. Dara Goldsmith, that if a person wants to invest a ward's assets in the market that they do so as a prudent investor rule, the reasonable man rule, which is set forth in Chapter 162 of *Nevada Revised Statutes*. It is not our intent that if a guardian does not feel comfortable taking a ward's assets into the market, they are not forced to do so. With this provision, we would suggest a little rearrangement, which is provided in my letter (Exhibit B).

If a guardian invests in a manner that is already contained in NRS 159.117, subsection 2, then Sections 6 through 10 of this bill shall not apply. The provision of law, NRS 159.117, subsection 2 says that a guardian shall put a ward's assets into certain listed investment vehicles, which are all federally backed, or privately insured bank accounts, Treasury Bills, and the like. It's not our intent to force a guardian to put a ward's investments into the market if they do not feel comfortable, and they do not believe that is the appropriate place for this ward's assets.

Section 14 of the bill is meant to streamline the use of a notice as the form of notification of a hearing. Once again, we had multiple provisions that talked about how a notice should be served, so we wanted to make sure that all notices are served in the same manner. That's what Section 14 would do.

Section 16 is modifying the use of a citation, when it is meant to notify an individual of the initiation, the first petition, in a guardianship proceeding. That's where the court is going to decide whether or not a person meets the definition of incompetency or incapacitation and warrants the imposition of a guardianship. The additional requirements contained in Section 16 are meant as a due process type of protocol, to make sure that the proposed ward actually receives the notice, and gets particular information so that they can respond, accordingly, at the hearing in front of the court.

[Jennifer Henry, continued.] Section 17 is requesting that a notice of entry of order be done on a temporary guardianship order. Right now, there is no method defined as to what is appropriate notification after a temporary guardianship has been issued. We are asking that it be either by notice of entry of order, which is a court document, or that an affidavit stating that the individual has telephonically contacted the relative or the interested party entitled to notice, is filed with the court within 48 hours.

Sections 18 and 19 do exactly the same thing as it relates to an adult guardianship, with regards to the notification after the entry of a temporary guardian.

Section 20 broadens the persons who are entitled to a notice of a hearing in a guardianship matter. We are asking that the word "reasonably" be inserted in the bill, so that the proposed guardian, or guardian, shall reasonably have to identify the people that are entitled to notice. Right now, it just says, "Shall determine." That could become quite problematic later.

In Section 21, we're asking for a clean up of how the current provision of the bill is written. Right now, it tends to be a double negative, so it makes it a positive. It is the court's intent that if you are an out-of-state resident, you must associate an in-state resident in order to qualify to serve as a guardian in a Nevada guardianship case. That is done because of long-arm statutes with regard to service. We want our in-state guardian to be securely here, so that the in-state and out-of-state guardian are jointly and severally liable for any action that would happen. It would be the impetus upon the in-state guardian to have to call the out-of-state guardian, to shift any kind of responsibility that the court may find, upon the in-state guardian.

The gist of Section 21 is that it's written in such a manner that it leads to a lot of confusion, so we're asking that it be cleaned up. Also, in this section, we are asking that the petitioner has to either join in the petition, or consent in writing to serve as guardian, and affirm that he or she is qualified to act as a guardian. A lot of times, an individual will nominate another person to be a guardian, but that guardian has not consented to serve. We don't believe in involuntary servitude and want to make sure that the person being nominated is aware of that nomination and agrees to take on the

role of the guardian, and can also say in writing that they meet the criteria to serve as a guardian in the state of Nevada.

[Jennifer Henry, continued.] In Section 25, subsection 4, something needs to be added to make it clear that it is fine for a guardian of a person to apply under Chapter 433A of *Nevada Revised Statutes* for an involuntary commitment to a mental health facility. Right now, as the guardianship statutes are written, a guardian does not have the right to involuntarily commit an individual to a mental health institution. That is because of due process rights.

We have come upon an insurmountable problem in the guardianship court here in the Eighth Judicial District Court, wherein a guardian will come to my court and petition to have an individual involuntarily committed. Unfortunately, we do not have the protocols or the resources to make sure that a person's due process rights are protected when that petition is brought to guardianship court. However, we in the Eighth Judicial District do have a court, the mental health court, which has those protocols and procedures. We want to make it abundantly clear that while you cannot do an involuntary commission without a court order, you can go to the appropriate court that can afore the due processes of the person that may be committed. We want to make sure that it is clear to the guardian that they have a mechanism to get an involuntary commission, if the individual meets the definition to be committed.

Section 28 was intended to import some of the probate statute into Chapter 159 [of NRS], regarding the priority of paying expenses. However, after some further discussions with the practitioners in the south, as well as some of the agencies in the south that deal with guardianships and the needs of the ward, it has been determined that if this section remains, we're going to end up with some payment problems.

For instance, a hospital may end up taking priority over the day-to-day care needs of a ward, and we're not going to be able to pay the caretaker. What we're asking is that this actual section be revoked and stricken and leave the priority of payment of ongoing expenses and bills to the court, with creditors claims being submitted, and the guardian having interplay with those particular creditors. We need to be able to evaluate the ward's estate in light

of the future needs of the ward. If we could get Section 28 stricken that would be lovely and wonderful.

[Jennifer Henry, continued.] Section 29 adds a punch list of things that a guardian must notify the court about before the guardian takes those actions. We currently have a punch list, but we'd also like to add if a guardian proposes to declare bankruptcy on behalf of the ward, they need court permission to do so. If the guardian wants to sue, and has a cause of action that belongs to the ward, but sues on behalf of and for the ward, that should be brought to the court's attention. If you would like to retain counsel to act on behalf of the ward in some outside capacity other than the guardianship proceedings that should be brought to the court's attention. Before the guardian enters into settlement agreements, that also needs to be brought to the court's attention.

The wisdom behind this is there needs to be a cost-benefit analysis as it relates to the impact upon the ward, before the guardian takes actions that are going to bind the ward, maybe to the ward's detriment.

Section 31 of A.B. 551 is introductory language that belongs just previous to the prudent investor sections; those are Sections 6 through 10. We would ask that the Committee suggest having the total meaning understood by all that are reading these sections that Section 31 appear before Sections 6 through 10, so that it makes it abundantly clear upon the readers of the statute that it is not the bill's intent, or the author's intent that if a guardian does not believe they should be investing in the market, that they're forced to do so.

That concludes what I have to say with regard to the bill, as it's written, and some suggested amendments or rewriting that would make it clearer to the ultimate user of the statute, once it's enacted. At this point I'm willing to assist the Committee in any manner that I possibly can. I'm willing to assist the Legislative Counsel Bureau if this goes back for some revisions, and I'm open to questions.

Vice Chairman Horne:
Our Chairman was trying to convey to you—regarding your suggestion in Section 31—that the order in which the sections fall in NRS, has already been set, along with the standard, here at LCB. We give them the discretion to do

that. After we decide on the bills we're going to approve and not approve, they go and put it in statute in the format that has been consistent over time, so we're just going to allow them to do that, but thank you for your suggestions.

[Vice Chairman Horne, continued.] On page 6 of the bill, Section 14, I have a question on your notice. You've asked to change it from certified, registered, ordinary, first-class mail, to regular postage paid. If we're truly trying to provide notice, it seems like we would want to have proof that notice was attempted.

Jennifer Henry:
The way it usually happens, and it's been the protocol for over 25 years, is if there is a citation, the service is accomplished by certified mail, return receipt requested. Last legislative session we also included personal service, which I believe is a higher level of service; it's a better form of service. With regard to petitions during the maintenance of a guardianship, not the initiation and not the termination, but during the actual ongoing proceedings, we've always, and the law has historically only required a notice of those types of proceedings to go out by regular, ordinary, mail, first-class with a stamp attached.

Quite frankly, I'm struggling to find the provision that you're asking me about.

Vice Chairman Horne:
It's on page 6, Section 14, subsection 2, lines 4 through 7.

Jennifer Henry:
To answer your question, this would be an ongoing administration type of a petition that would be filed for instructions, or to notify the court of something that was going on, perhaps even an accounting period. Historically, it has only been ordinary, first-class mail. I'm not sure why certified, registered, or ordinary, first-class mail has been stricken. I would assume that the reason that was done was because certified and registered mail take a long time to get from the person who puts it in the mail, to get it delivered, and there's only a 10-day notice attached to these kinds of petitions.

Notifying somebody that this matter is going to be heard before the court would be actual 10-days notice, plus 3 days mailing, under the Nevada Civil Procedure regarding mailing. Therein lies the wisdom that if we do it by certified or registered, then we're going to have a delay, and the person is actually going to get notice after the hearing has taken place, so first-class mail would be the easiest form to get that notification and to ensure that it's gotten to the interested people, prior to the hearing.

Vice Chairman Horne:
I still think it might be problematic to change that especially if we wanted them to get to court, and they don't.

Assemblywoman Buckley:
My first question has to do with Section 3 of A.B. 551. Why aren't Rule 11 sanctions sufficient to deal with this matter? I'm a little concerned that if we begin putting in the awarding of attorneys fees when pleadings aren't in good faith, in every chapter, that becomes duplicative in NRS.

Jennifer Henry:
Currently, Chapter 159 of NRS has some fee shifting provisions already incorporated. For instance, if a person causes an attorney to be appointed for the ward, and that appointment becomes unnecessary, or was unreasonably caused, there is a shifting provision. The same is true if the court finds it necessary to appoint a guardian *ad litem*, or an investigator, and it becomes abundantly clear that the allegations that led the court to believe that those services or those individuals were necessary to this case were not the fact. In fact, they were unreasonable and unnecessarily added as an expense to the ward, and so the court can shift the fees. We're trying to make Chapter 159 of NRS a little bit more self-sufficient, so we're asking that also occur at the first hearing.

Assemblywoman Buckley:
The second question I have has to do with the co-guardian issue. It's not so much the language that's being suggested in the bill, but the entire issue in and of itself. Let's say we have a ward in Nevada who has an aunt, a very solid family member in California, and they want to be guardian. Why do we require them to get a Nevada resident co-guardian? Is it solely because of service of process, or the long-arm statute? Couldn't we deal with that by saying that anyone who becomes a guardian for a Nevada resident, under the wardship of the guardian court, must submit themselves to jurisdiction? I'm wondering if that procedure may be costly for families, and is the best way to go.

Jennifer Henry:
We've grappled with that situation. During the last Legislative session we rewrote that if somebody was duly appointed as a guardian in an out-of-state proceeding, they could come in and serve by themselves without the association of a co-guardian, however, the actual mechanics of how the court would have to go about trying to pull this person in would become a logistical nightmare. As you know, we have a very high *pro per* litigation population. If we don't have a responsible attorney here that's following the case, and getting everything before the court that needs to be brought before the court, then the

onus falls upon the judicial officers, or the judge and the staff of the judge, to go out and actually track down these individuals who are out-of-state residents, and then get service on them, to make them appear before the court.

[Jennifer Henry, continued.] A lot of times we have to issue a subpoena or a citation, then we have to go get an out-of-state court commission—another court proceeding in the other jurisdiction—to pull that person back to make them accountable. It was decided among the attorneys that took an interest, the north, rural, and the south, that we needed to continue to have that long-arm statute ability to get around it. In other words, we could have the in-state, co-guardian be jointly and severally liable for any actions that occurred, so that we could go ahead and go after the in-state person without having to get the out-of-state commission; without having to go through the service of process; and without having the judge be the person that's driving the train, to get that person to appear back before its tribunal.

That was the wisdom, and we decided amongst the state practitioners that deal in this area that continuing to have an in-state co-guardian was a high safety measure. We have the ability to make sure peoples, for instance, defalcated assets, could be held accountable, and that the ward's estate could be made whole.

Assemblywoman Buckley:
It still seems problematic to me, especially in cases where there really isn't any estate and there's really no financial assets, and in the children's area. It seems burdensome, especially when a child is abused and there's a relative willing to take guardianship. How do they find a Nevada co-guardian willing to be jointly and severally liable?

Jennifer Henry:
In those situations, the relative is usually found through child protective services, and an ICPC [interstate compact for the placement of children] has actually gone on, and the guardianship never really originates in Nevada. It would go to the state where the child is being placed, with the permission of another court entity, the juvenile court, or CPS [child protective services], so I don't really think that is a problem with regards to children.

A guardianship can be initiated in most states where the person is actually found. You don't necessarily need to be a resident of Nevada to have a guardianship initiated in Nevada. If you are found in the state, and you are determined to be incompetent or incapacitated, then a guardianship can be initiated and it becomes a matter of whether or not that guardianship needs to be transferred to the more appropriate place.

[Jennifer Henry, continued.] If an individual is on vacation and gets hit by a car—they're in UMC [University Medical Center in Las Vegas] in the trauma care unit—we get a guardianship here, but if we find out that they're a resident of the state of Pennsylvania, as soon as it's practically possible, we will get that individual moved back to the state of residency. That's why it's very easy to get a guardianship over an individual where they are found, and it doesn't necessarily follow like in Ms. Buckley's situation, the UCCJEA [Uniform Child Custody Jurisdiction and Enforcement Act of 1997] regarding jurisdiction over children.

Dara Goldsmith, Attorney, Goldsmith and Guymon, Las Vegas, Nevada:
I have one item to add, which was contained in a letter (Exhibit C) that was faxed to the Judiciary Committee yesterday.

My only additional comment, aside from echoing those of Commissioner Henry, is that if this bill is being sent back to the Committee, a change to NRS 159.191, Section 2 ought to be considered. The reason I suggest that revision is when we are dealing with a guardianship of an estate, that's when we're dealing with the management of someone's funds. If we have a situation where the ward either dies, or turns 18 years-of-age, in theory, the guardian is not required to go forward with closing out the guardianship.

I've had this come up in the past year where I actually had to get a court order requiring the guardian to file its final accounting because it was due, although the individual had turned 18, and it was overdue. To some degree the comment I got was that the accounting really wasn't due for another 7 months.

We want to make the revision to NRS 159.191, Section 2 that if the court removes the guardian and the court determines that the guardianship is no longer necessary, or if the ward dies, or if the ward turns 18 years-of-age, then the guardianship is terminated and the final accounting should go forward.

That's my sole addition to Commissioner Henry's comments.

Chairman Anderson:
In reviewing this legislation, which apparently you took part in putting together the requirement that all interested parties be served, which would include all the creditors of a guardian, is that a heavier than normal responsibility to know every known creditor? Does that create a heavy burden for a guardian?

Dara Goldsmith:
The language doesn't include the word "creditor." To some degree, I think that could be problematic. As set forth in Section 2, it says "creditor," it doesn't

specifically say "known creditor." That's language that isn't exactly as set forth, if we're going to go out to known creditors that would be noticing folks who the guardian actually knows about. If you're going to require notification of all creditors, it becomes more akin to a probate.

[Dara Goldsmith, continued.] In a probate matter, in order to notice creditors, we are required to do a publication. That is a very good question. If we are required to give notice to creditors, then it may presume that we need to have a publication occur. It may be preferential. Rather than requiring to say, "may" have to notice creditors, to merely say that if you are a creditor, and you do come forward, that you can be considered an interested person such that we could give you notice.

For instance, if someone's a judgment creditor of the ward, or if someone like MasterCard has a large bill, they may want to be involved in the case if they so choose, similar to probate. If a creditor has the ability to file a request for special notice, the only thing that a known creditor receives by mail is the notice to creditors; they don't receive any other pleadings unless they file a request for special notice. The impetus behind naming a creditor as an interested person is to give them standing if they want notice, that they can be noticed. I don't think there was a desire to require that every creditor be noticed in every case.

Chairman Anderson:
It seems to me that the term "interested person" in Section 2, which includes "creditor," on page 1, line 7, presents that problem. You're of the opinion that you get to be selective in which creditors are going to be noticed?

Dara Goldsmith:
No, I'm not of the opinion. It would be my suggestion, in looking at that provision, that it be creditors who request special notice, potentially. I think a concern can arise if a creditor is entitled to notice, because under the statute they may not necessarily be entitled to notice in the guardianship because they may not be considered an interested person, and I think that the desire was to allow a creditor to be considered an interested person if they file a request for special notice. That wording may need to be looked at.

Chairman Anderson:
What's the harm if we do not proceed with this piece of legislation? If we just continue as we are currently doing, in your opinion?

Dara Goldsmith:
If we don't proceed with the suggested revisions during this session, we face a few problems. We face a loophole with regard to whether the Prudent Investor Act applies to guardianship. At the present time, it does not. There's a different standard of review for every fiduciary in the state except for guardians. Guardians are held to a lower standard. I think it's important to not have that happen.

[Dara Goldsmith, continued.] By and large, most of these are technical corrections. Oftentimes, if you don't correct the technical issues as soon as they become apparent, it becomes more difficult to correct those technical items, in the future.

Commissioner Henry is probably a better person to address all the problems, as she sits as the guardianship judge here in the Eighth Judicial District Court. I'm merely a practitioner. As lawyers, we're charged with working our way through the statutes that were given. I think that members of the judiciary, oftentimes, are better equipped to answer those types of questions because they find themselves trying to work their rulings through the law, and protect the rights of the ward and everyone involved. To some degree, the charge of the attorney in dealing with their client is slightly different.

Shelley Krohn, Private Citizen, Las Vegas, Nevada:
I'm a practitioner here in Las Vegas and practice quite a bit of guardianship. I'm in agreement with the changes that have been suggested. I had initially planned not to speak, but during the conversations earlier, I did want to put in my two cents with respect to the need for a co-guardian who is a Nevada resident.

I know there are other statutes in Nevada that don't require that, specifically the probate statutes. If a will designates somebody to serve as a personal representative, that person can serve notwithstanding the fact they are not a Nevada resident. However, in guardianship you have a different situation. You're dealing with living beings that need different levels of care, and different levels of attention. Some of our wards are very capable of their day-to-day activities, others are clearly not. I think it is important to have someone here, a Nevada resident who can help these individuals more quickly than somebody who lives in another state.

I think there is a difference between the probate laws and the guardianship laws with respect to still requiring a Nevada resident serve, either as a co-guardian, or as the sole guardian.

Vice Chairman Horne:
I will close the hearing on A.B. 551. There's some work that needs to be done on this.

Chairman Anderson:
I've distributed the summary of the bill (Exhibit D) so that there would be clarity as to what the fiduciary questions are, where the bill expands the acts to include those specifics, and to clarify why this piece of legislation needs to be considered.

Let's turn our attention to A.B. 490.

Assembly Bill 490: Establishes provisions regulating providers of immigration assistance services. (BDR 52-122)

Kathleen Delaney, Deputy Attorney General, Office of the Attorney General, State of Nevada:
I serve in the Bureau of Consumer Protection under the Consumer Advocate, Adriana Escobar-Chanos. I'm here today to introduce and seek support for A.B. 490. The Attorney General requested this bill to prohibit, and in certain sections require, certain types of conduct by nonlawyers who provide immigration assistance.

Unscrupulous individuals and corporations have taken advantage of the lack of affordable legal services in immigrant communities by charging hundreds, if not thousands, of dollars to those desperate to adjust their immigration status, or otherwise navigate a complex legal system.

We must take steps to prevent wrongdoing by those who prey on immigrants who are seeking a better life for themselves and their children, through efforts to secure permanent residence, or assistance with other legal matters affecting them and their ability to live and work in our communities.

The complexity and ever changing rules and regulations associated with immigration law, in particular, increase the likelihood of consumer fraud by dishonest nonlawyer document preparers seeking to take advantage of consumers with immigration matters to resolve.

Consumers who use these services lose thousands of dollars to fraudulent individuals or businesses and may become subject to deportation proceedings

and, in some cases, may even be accused of attempting to file false papers with immigration authorities.

[Kathleen Delaney, continued.] That said, the Attorney General is mindful of the concerns expressed by the State Bar about the statutory and case law regarding what constitutes the unauthorized practice of law, and that the nonlawyer document preparer is extremely limited in what services can be provided lawfully, without the supervision of an attorney.

It is not the intent of the Attorney General to have a bill that, in any way, inadvertently legitimizes individuals or businesses who otherwise engage in the unauthorized practice of law. What we are looking for is something that applies to individuals or businesses that provide services not prohibited by the statutes and case law definitions of unauthorized practice of law.

We think this bill, with some minor adjustments, can effectuate that. It is the Attorney General's desire to, if at all possible, move forward with the bill that protects the growing immigrant population in this state from harm, which is caused by nonlawyers providing legal services within this immigrant community, and which is balanced against the need for access to legal services.

Toward that end, we would propose amendments that remove specific references to immigration assistance services as a separate business type, or business entity, deserving of regulation. Replacing it with a reference to nonlawyer, a legal document preparer who provides assistance in matters concerning immigrants. At minimum, this would entail editing or removing altogether Sections 5, 9, and 10 of the bill. This may also require some adjustment to Sections 6, 7, 13, and 20 through 22, which would place these businesses under the regulation of the Consumer Affairs Division.

I can, if you like, take a moment and go through and summarize what each of the sections of the bill do. I know that there are several distinguished members of the State Bar here today, who are seeking to voice their opposition to this bill on the principles of any efforts to inadvertently legitimize the unauthorized practice of law. That is not our intent. We are amenable to dealing with this problem. The problem exists, these services are out there, they are harming consumers and we need to take steps to address this. Currently, the efforts to put them out of business for the unauthorized practice of law, is not addressing the basic need to protect consumers in these areas.

Chairman Anderson:
Do you have a written document with suggested amendments?

Kathleen Delaney:
I did not prepare a written document for the simple fact that we were in meetings with the State Bar when this issue was brought to light. I do have handwritten notes where I adjusted certain provisions, specifically, Section 5 and Section 9 where the references to immigration assistance services, as a business entity or business type, would be subbed out for reference to a nonlawyer legal document preparer. With similar adjustments, throughout the bill, that would hopefully address the concerns that the State Bar has. If not, I think what would be appropriate is a work session to allow us to craft something that would meet everyone's needs.

Chairman Anderson:
Recognizing that everything has to be out of here by Friday. This bill was introduced on March 28, the drop-dead date for agency bills. Did the Attorney General's Office have an opportunity to review earlier drafts of the legislation?

Kathleen Delaney:
It is my understanding that the Attorney General acquired this legislation, and it is based on legislation that exists in New York. The Attorney General at the time felt that it was sufficient to address the needs here in the state of Nevada. What was brought to our attention late last week by the State Bar is that in fact, our current interpretation of the unauthorized practice of law is so much more broad and applies to narrow down what these services can provide legitimately to such a degree, that the New York statute doesn't work. We've been trying since then, on very short timeframe, to fashion some alternative. We do appreciate that we're on a very short timeframe here, and I have some minimal amendments I could propose, and we could go forward and deal with it from there.

The fundamental difference we have with the State Bar is that the preference would be not to have any bill that would, in any way, legitimize these services. What we're trying to craft is a bill that recognizes that these services in fact exist and we need to weed out the bad actors, and limit it down to those truly who can operate legitimately.

Chairman Anderson:
The need of this bill, in your opinion and the Attorney General's opinion, is that there are these folks who are preying upon immigrants, putting themselves forward, and preparing documents incorrectly. What we're trying to do is regulate them, and to legitimatize some of their practices so that we can regulate them, or, are we trying to put them out of business?

Kathleen Delaney:
The quick answer is, ultimately both. This bill would be one prong of a two-prong attack on these businesses. For those that can legitimately operate, prepare documents without giving any additional legal advice, and provide translation services in a very limited way, we would regulate them through the Consumer Affairs Division. It requires registration and the posting of a security. That is quite an onerous obligation and it does tend to weed out the fraudulent actors from the good actors.

The second prong, which is a prong that we are going to undertake regardless and we already have with the State Bar, is to actually shut down those businesses that are in fact engaging in the unauthorized practice of law. That first prong is currently missing from legislation, and we feel it's very important at this point to address it. If we just leave the second prong as the only method to address these businesses, as I understand it from the State Bar, subject to their clarification, they are complaint driven. They must have a complaint come forward before these cases can be taken, or will be taken. Those complaints aren't coming forward, and we're not addressing enough of the fraudulent actors in this industry, as the statutory and case law currently stands.

Chairman Anderson:
You realize that if we're going to be able to move with this bill at all, that would mean you would have to do it today and tomorrow. If we don't have it in the work session by Wednesday to Ms. Allison Combs for inclusion in the work session document on Thursday, it won't happen.

Kathleen Delaney:
We do recognize that. I am present and able to do this either from here or from Las Vegas. I do have minimal amendments to propose today that I think would address the vast majority of the concerns, but what we are not prepared to do today is to withdraw this bill in light of the concerns expressed by the State Bar.

Assemblywoman Buckley:
This is a big problem statewide, as we discussed with the two other bills that we've had on the topic already. I see in my nonprofit legal capacity that these folks just prey on these folks. It's awful; they take thousands and thousands of dollars. They say, "Hey, we'll make you legal. Fill out these forms." By doing this, they bring themselves to the attention of the INS [Immigration and Naturalization Service], and then end up getting deported. It is deplorable what has happened.

[Assemblywoman Buckley, continued.] I don't think this bill is the way to go. I don't think legalizing them, and I don't even think that definition helps any, because we still end up legitimizing them. If we're just saying that anyone who offers to give translation services in the immigration area must have a bond; maybe that helps. There are two main problems with what's going on now. We don't have enough free legal services to give people an alternative. If you had competent legal services that told people what the law is, you'd put them out of business. It's kind of a free market approach, so to speak.

The second would be that we have the laws on the books to put them out of business, with the unauthorized practice of law. We just don't have the resources to enforce it, and we have the issue about folks being afraid to complain. This bill doesn't solve either one of those approaches, which is what I think we need. I don't know, maybe you can think of something in a day. Maybe having a bond is better than nothing, but not if the bond is creating a profession which I don't think should exist without having a lawyer who knows the law willing to put their license on the line. I wouldn't support venturing into that area.

Kathleen Delaney:
I appreciate those concerns. There is absolutely no desire either, on the part of the Attorney General, to legitimize these businesses. We tried to amend the definitions to eliminate in any way, shape, or form, any reference to immigration assistance services as a separate business type or business entity that must register, which is currently contained in this bill, because we agree that would inadvertently, potentially legitimize bad actors.

If you look at the provisions that are separate from the regulation, and you look at provisions 14 through 19, A.B. 490 doesn't do anything to legitimize or otherwise enable these businesses to operate. It simply recognizes that if they are operating, they need to provide written contracts; they need to provide proper information; they need to disclaim in the contract, in postings in their offices, and in any advertising that they are not lawyers and cannot provide legal advice; and that they are not sanctioned by any immigration services, et cetera.

It is a very difficult balance to strike. How do we help consumers who are being harmed by these groups, and yet not legitimize the bad actors? Subject to further clarification from the State Bar, the only method to address this industry of fraudulent actors would be to put them out of business. Either for economic reasons or because complaints aren't being received, it's simply not happening. This is a way that the Attorney General's Office came up with to address this.

[Kathleen Delaney, continued.] In terms of whether or not there is a legitimate part of this industry that's out there, the State Bar puts out a lengthy packet that is directed towards "nonlawyer document preparers." It is our understanding that there are a few legitimate providers out there, and to some extent we can regulate them and recognize them. At the same time we want to weed out the bad actors that provide consumer protections. That's what we're attempting to do. Whether we can do it in a day, I don't know.

Assemblywoman Buckley:
Would the Attorney General's Office have the ability to go after any of these preparers under deceptive trade practices? For example, if there's a pattern and practice of folks submitting documents to the INS when they know, or should have known, that there was no available relief, would your office have jurisdiction over that?

Dara Goldsmith:
Yes, the Deceptive Trade Practices Act of 1968, as you know, is quite broad. I believe there are several ways that we could attack the really egregious providers. We have participated with contemporaneous actions with the State Bar for those that are in any way violating the law. Whether it be the unauthorized practice of law statutes, or otherwise, we've taken actions on those really egregious providers. The problem is we too have difficulty proving where the misrepresentations are. Where are the things that have been said? We need people to come forward to complain to us, to drive these cases.

Having some minimal registrations would give us the authority to go out proactively, rather than to wait for complaints to come in. In essence, yes, if a complaint was received and it revealed any form of misrepresentation, or deceptive trade, or violation of law, the Attorney General's Office could take action. Our concern is in those areas where we don't have complaints.

Assemblyman Carpenter:
I've had a little experience out there in real life with these situations, but I just don't see that having them entering into a contract or anything like that is going to really help the situation. What's happening out there is these people are so desperate that they will do anything to try to get their papers in order. Even the ones that have their papers in order, and everything is proper, have a terrible time working through the system. I don't see that this really helps them.

There are some lawyers that practice in this area and are specialists. That is really what you need because an ordinary lawyer that just looks at day-to-day contracts out there is not qualified to do this kind of law that is so complicated, and the INS keeps changing their rules and regulations about every other day.

[Assemblyman Carpenter, continued.] It costs some of the people I work with thousands of dollars to get to the proper attorney that can help them. I think anything that attempts to make these people legal is doing more harm than good.

Chairman Anderson:
This is one of those questions and observations that we're all very frustrated about. Any of us who deal in a community that has a large Hispanic population recognizes they are being victimized. Part of my constituent area includes almost 20 percent Hispanic and Spanish speaking Latino population, and they have difficulties in this particular area with trying to legitimatize and get their paperwork straight. I think we're all very, very sensitive to it. I know the Attorney General's Office is very, very sensitive to the issue. The reason we scheduled the bill is because we're anxious about this particular issue. Hopefully, we can see something happen in a day.

Ann Price McCarthy, President, State Bar of Nevada:
Ms. Buckley and Mr. Carpenter have expressed a lot of our concerns. Mr. Clark is with the Office of the Bar Counsel for the State Bar of Nevada. He can give you many particulars and details on what the State Bar does and why we are opposed to this bill.

The State Bar licenses lawyers to do this. We have the lawyers to do this. The issue here is probably not money, but it is perception, and that's the State Bar's problem. We need to make sure that people know we are available. Because it's immigration and it is a federal agency that governs immigration, you don't have to be a licensed Nevada attorney to practice immigration law. At the same time, because of our Supreme Court rules, we have every right, and do, discipline bad actor attorneys who don't properly practice immigration. We are very active in that area.

We worked very hard the last several sessions to halt the unauthorized practice of law. At this point in time, I want to thank this Committee in particular for this session really taking that in hand, as Ms. Buckley said the two bills that you've already addressed. That has really helped.

I also want to apologize for not having a better relationship with the Attorney General's Office, and that's partly our fault. We didn't know this bill was going to come up. We were unaware of it. We weren't contacted by the Attorney General's Office, but if we had a relationship with that office, such that we should have had, this maybe wouldn't have appeared in front of you. Or, perhaps we could have crafted something that was better, although I agree

with the comments of your Committee that we don't want to legitimatize these people; we want them out of order.

[Ann Price McCarthy, continued.] I practice primarily in the areas of family law and bankruptcy, which, besides immigration, are the two other areas of law where people are so badly damaged by the document preparers. I won't go on with anecdotal evidence, but I have it. I am here to answer any questions from your Committee. I would like to turn it over to David Clark who really has more details for you on this bill, and on what the State Bar can, and does do, regarding this.

David Clark, Assistant Bar Counsel, State Bar of Nevada:
I split my time between prosecuting attorneys, and prosecuting the unauthorized practice of law in the name of the State Bar. Given the questions by the Committee, I think the members have a pretty good grasp of the issues as our president stated.

When we first heard of this bill, we contacted the Attorney General's Office because we were taken by surprise. We then sat down with Ms. Delaney and Adriana Escobar-Chanos, and had a very good meeting, I thought. We had a good airing of our opinions. In our opinion, any nonlawyer who provides immigration assistance services is by definition engaging in the unauthorized practice of law, and that is based upon opinions from the Office of General Counsel of the INS [Immigration and Naturalization Service] going back as far as 1992, which has been reaffirmed in case law as recently as 2002.

The New York scheme notwithstanding, throughout the country and particularly in Nevada, it is our contention, and well grounded in case law and in opinion, that if you're not a lawyer and you're providing assistance even filling out forms, or preparing preprinted forms, or in any other way assisting people with immigration matters, you're engaging in the practice of law and need to be licensed.

It's not the State Bar of Nevada that holds the key to practice immigration law here. If you're licensed in any state whatsoever you can come to Nevada and practice immigration law. In fact, probably half the attorneys here; who have a shop here; who advertise here; and who engage in immigration practice, aren't licensed here. However, they are subject to our jurisdiction and we routinely have non-Nevada lawyers before our disciplinary boards, subject to discipline.

In our conversations with the Attorney General's Office, we air with them our concerns that while this practice is out there, if you tend to recognize and say, "Well, if you're going to do it, then you have to follow these standards," sort of

legitimizes it and is in essence illegal conduct. And saying, "Well, if you're going to engage in legal conduct, make sure you do it this way." That, I think, would provide an impediment to our enforcement proceedings. We've had two injunctions we've obtained in Nevada recently, on firms that have engaged in just this same conduct, and we've had injunctions upheld in those cases.

[David Clark, continued.] We've also begun working with the Attorney General's Office, the northern office through Deputy Attorney General John McGlamery, in going after some of these document preparers, and so we're doing a one, two punch. They get a letter from the Attorney General, they get a letter from our office, and they just fold up shop and leave, or roll over and consent to discontinue their operations.

From this bill has come a meeting of the minds between our office, the Office of the Bar Counsel, the Attorney General's Office, and the Consumer Affairs Division, in terms of coordinating a better way to enforce this. The problem is more fraud and lack of education by the public. It is this unmet legal need out there, because there are plenty of lawyers who will take on these cases for the amount of money these people are paying. We just need to step up the education because a lot of these victims either come from a country whose culture and government says you can do these backhanded ways to get legitimized. They simply don't know better that our system requires certain things of lawyers.

Assemblywoman Buckley brought up that the very decision to file something with immigration services is a legal decision, and can have far-reaching implications. People will go to these shops and say, "I need a Green Card," and they say, "For $5,000 I can get you a Green Card, and we'll file it." Once they file for a Green Card, or they seek political asylum, they are now on the radar screen. They've now become identified by the INS, and their case is nowhere near eligible for asylum, yet now that they've filed and applied for it, INS denies their application and then moves to deport them.

Oftentimes, in talking with attorneys who handle immigration, they'll get somebody coming to them saying, "I've been in this country 20 years and I have 5 grown children, and I need to apply for asylum." After talking with them the attorney will say, "You simply need to go your way and go about your business and not apply, because for you to apply and be rejected and then deported is going to rip your family apart. The most prudent way to go, at this point, is to simply go on with your life, and your children live their lives, and go about your business."

[David Clark, continued.] Making the decision to say you should file for something, or you shouldn't file for something, is a legal decision, and it involves legal analysis. As articulated by others, the bill as crafted, I think, legitimizes an illegal activity. We stand ready to work with the Attorney General's Office in terms of any amendments. I don't know how practical that's going to be at this point, because when you expand it to the term nonlawyer document preparer, you can conceivably expand that to include accountants, real estate agents, title companies, bookkeepers, CPAs [certified public accountants], and that sort of thing.

Chairman Anderson:
Let me make this easy for you, Mr. Clark. I have a new addition to my office that I euphemistically call the "Woodshed." If I can make the Woodshed available to you to talk to the Attorney General during the next little while, do you think that you might be able to work out the differences in the bill, or, are you of the opinion that the differences that are here are so dramatic that they cannot be worked out in the short amount of time in front of us?

David Clark:
Candidly, I feel that we are under too short of an amount of time to work out issues the way the bill has been put forth at this time.

Eva Garcia-Mendoza, Attorney and Counselor at Law, Las Vegas, Nevada:
[Presented Exhibit E for the record.] I am a bilingual attorney and have been practicing law in this state for almost 25 years. Prior to that, I was the first official court interpreter in the state of Nevada. I have also dedicated most of my practice to the practice of immigration law. I am intimately familiar with all of the problems that aliens encounter on a daily basis with people who purport to be out there to help them in their legal quagmires and problems, who are not attorneys and don't know all of the ins and outs of a very complicated legal system.

There is a United States Supreme Court decision that indicates that the immigration laws are more complex than tax laws. I'm not going to belabor the matter since David Clark, Assemblywoman Buckley, Assemblyman Carpenter, and you have already indicated.

In 1998, I prosecuted, on behalf of the State Bar, one of these immigration service providers. This matter was brought to my attention because I also formed the American Immigration Lawyers Association Nevada chapter, over 12 years ago. The immigration lawyers, the immigration attorneys, and those that work for the immigration services came to me and other members of our Immigration Bar, and said, "You've got to do something to stop this from

happening: Too many people are being harmed who should not have been harmed."

[Eva Garcia-Mendoza, continued.] David Clark said many times that the best answer to a question from what you call an immigrant and what we call, in immigration law, an alien is not to do anything, and not to bring them under the radar screen of immigration. The immigration practitioners don't know that. Secondly, we found out, in prosecuting this action against this consultant, that they were charging, oftentimes, more money than attorneys would charge to fill out forms, and those forms obviously were the wrong forms because it created many, many people to be deported. It created some horrendously sad stories.

We believe that this one company in particular was responsible for getting more people deported than has ever happened in the state of Nevada. We vehemently oppose this bill.

Chairman Anderson:
We've been concerned as a Committee, over the last several sessions, about people who prey upon aliens who are having difficulties, oftentimes in language, and want a comfort level in dealing with their problems and want fair treatment at a reasonable cost. Often, word of mouth seems to be the biggest culprit here.

Do you believe that between now and two years from now that we might be able to find some common ground with the State Bar and the Attorney General's Office, where something can be worked out so that these people can't take advantage of aliens?

The process of becoming citizens has become more pronounced lately because of these people being taken advantage of. Do you see any hope that we could do something?

Eva Garcia-Mendoza:
Several immigration commissioners, the immigration general counsel, and case law have indicated that the selection of a particular form for someone, who walks in the door and presents a problem to the scrivener or secretarial service, is the practice of law.

There is case law of a bankruptcy case out of New Jersey that indicated that charging more than $50 for filling out forms was excessive. There are some secretarial services here that listen to a person's problem and then say, "This is the form that we should file for you." At that point it becomes the practice of law, so I don't see how we can legitimize these people. I agree with David Clark

and the State Bar that we already have statutes in place under the Deceptive Trade Practices Act of 1968, to regulate these people.

[Eva Garcia-Mendoza, continued.] The fact that we put a $50,000 bond for their misdeed is inadequate when you're talking about 200 people being deported.

Patricia Morse Jarman, Commissioner, Nevada Consumer Affairs Division:
[Submitted Exhibit F.] We are in opposition of A.B. 490. If this legislation passes it should be placed in the Attorney General's Office under their Bureau of Consumer Protection, because it involves interaction with the Board of Immigration Appeals of the United States Department of Justice, the Bureau of Citizenship and Immigration Services of the United States Department of Homeland Services, and the Executive Office for Immigration Review of the United States Department of Justice.

Chairman Anderson:
Let me close the hearing on A.B. 490. Let's move to A.B. 512.

Assembly Bill 512: Makes various changes concerning interception and recording of wire or oral communications in certain situations. (BDR 14-455)

Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and representing the Nevada Sheriffs' and Chiefs' Association:
We also have the support of the Las Vegas Metropolitan Police Department. We are here to present A.B. 512. I would like to go over a brief outline of the bill and the changes that we are proposing.

In the amendment you have before you (Exhibit G), we are requesting a change that would authorize the interception and recording of wire oral communications in certain very restricted situations involving hostage situations, barricaded subjects, and suicidal subjects.

On page 2 of the bill, the proposed changes would allow recording of conversations under limited situations, and where a crime has been committed. In Section 3, the proposed changes provide for disclosure of that communication, including its admission as evidence after a review to determine if it was a lawful interception.

[Michelle Youngs, continued.] I'd like to call your attention to the amendment (Exhibit G). We're asking that a language be placed on page 2, line 25 for clarification that we could include suicidal, or barricaded and suicidal subjects.

Chairman Anderson:
We're looking at page 2, Section 2, subsection 2, line 25, "a peace officer ..."

Michelle Youngs:
Prior to that language, we're asking that paragraph (c) be added.

Chairman Anderson:
We're going to put in between lines 24 and 25 the new language: "Has indicated or is believed to be suicidal and is barricaded in an area or structure."

Michelle Youngs:
Yes, sir.

Chairman Anderson:
That's the only amendment you're requesting?

Michelle Youngs:
Yes. When we submitted this bill, and when it was returned to us, we did not feel that it was clear that suicidal situations would be covered. In those cases, a crime is not always committed. Once we are there, of course, we're engaged.

Chairman Anderson:
Wouldn't you want to add (c) to Section 1, between lines 9 and 10?

Michelle Youngs:
That would be appropriate because that section deals with the actual interruption of phone service.

Barricaded and suicidal subject calls are the majority of those calls that our Hostage Negotiations Team responds to, and the ones we want to end peacefully.

Chairman Anderson:
Why don't you tell us what we're trying to accomplish here.

Michelle Youngs:
I wanted to present what we are asking to be changed in the existing language. Our motivation is to include hostage, barricaded, and suicidal subject calls in an exemption to allow us to record those conversations, and a mechanism to

determine whether those recordings could be admitted as evidence, if they're held to be lawfully intercepted.

Harry Dixon, Sheriff's Deputy, Washoe County Sheriff's Office, Nevada:
I've been on the Hostage Negotiations Team for 17 years. I'm currently the Senior Chief Negotiator. I'm going to tell you about an incident that happened to our team that is embarrassing to our department. It brought up a very good point in the law that we needed to address, and that's why I'm here today.

I'd like to address the Committee in support of A.B. 512. On May 23, 2003, deputies responded to a single-family home in Spanish Springs, Nevada, on the report of a domestic disturbance, with shots being fired. When the deputies arrived, they heard 6 more shots. The deputies found that the male suspect had fired at least one shot through a rear sliding window, and was now barricaded in a travel trailer parked behind the residence. SWAT [Special Weapons and Tactics Team] and hostage negotiators were called to the scene.

The first two negotiators arrived immediately and made contact with the suspect by cellular phone. As is our custom, the conversations were recorded. After the incident was peacefully concluded, negotiators took the tapes and contacted the Sheriff's Detectives Division and requested help in obtaining an emergency order.

We discovered that the recordings of the negotiations might have violated NRS 179.458. A criminal investigation into this incident was initiated, and our negotiators faced possible criminal penalties. If A.B. 512 becomes law, it would provide for audio recording of negotiations over hardwire communication devices during specific emergency situations. At the same time, it would allow for judicial review to protect the citizens of Nevada from abuse.

Recording negotiations is important to hostage teams and the law enforcement agencies they serve for the following reasons:

- Recorded conversations are important when briefing members of the team arrive on scene.
- Medical professionals who work with our teams use these recordings to make psychological profiles of criminal suspects.
- The safety of everyone involved in a critical incident is always our concern.
- Ending the incident peacefully is always a goal.
- Allows us to analyze background noise and the offender's play on words.
- Allows us to assess the danger and know when to act, which could be the difference between a peaceful resolution and a deadly incident.

[Harry Dixon, continued.] Civil litigation is another area where recording of conversations could be used to document exactly what was said. Negotiation techniques come into question during civil lawsuits, or when incidents don't go the way we anticipated.

For example, the recordings of conversations between the FBI [Federal Bureau of Investigation] negotiators and the Branch Davidians in Waco, Texas, and again at Ruby Ridge, were extremely valuable in discovering the truth during the Congressional hearings into those two incidents.

I believe that the Nevada Legislature, when enacting NRS 179.458, never intended or anticipated that this law would ever be used to prohibit recording negotiations during critical incidents. A.B. 512 would update the current statute to allow for advances in communication technology and recording during critical emergency situations, while providing a tool that could save lives.

Chairman Anderson:
We've heard that it is normal operating procedure of the Sheriff's Department to record all two-party conversations. Is that correct?

Harry Dixon:
Yes, that's correct.

Chairman Anderson:
Even though the statute protects the individual's reasonable expectation?

Harry Dixon:
We no longer record those conversations, but at the time we did. We were following a Title III action of the federal government's statutes, which allows one-party communication. This is the embarrassing part. We didn't know what our own state law said. We've been educated and we now follow it to the letter. We don't want this to ever happen to our officers again.

Chairman Anderson:
Are we broadening the statute to include one-party conversations, or is it only in the narrow profile of a hostage situation?

Michelle Youngs:
We want this to be a very narrow interpretation. The problem is only a few of our calls are actual hostage situations, which is a good thing. The majority of them are suicidal, barricaded subject calls. Those three situations account for almost all of our responses. The ability to record those conversations would

cover them. We have no intention of broadening the statute to address any other type of issues.

Chairman Anderson:
Initially, as the bill is drafted, it only takes care of the hostage situation. Your suggested amendment to add paragraph (c) on page 2, in Sections 1 and 2 of the bill, would be to broaden it to the question of suicide?

Michelle Youngs:
Yes.

Assemblywoman Buckley:
Why would we need to record the suicide? It seems like we're talking about apples and oranges, comparing a hostage situation to a suicide.

Michelle Youngs:
I don't know if we've done a good enough job explaining what these recordings would do for us. It's not an investigative tool. It's a tool to help us with strategy. In these types of calls, we don't know exactly what we have. We may only know a little bit about it and think we just have a suicidal subject who's barricaded.

The recordings can help us analyze background noise and go over different points in the conversation. If the situation is drawn out, the recordings help in turning it over to another negotiator. Our goal is to get the person out peacefully and avoid a tactical solution where SWAT has to go in, or in some other way force the person out.

Assemblywoman Buckley:
It's a training tool for the next case?

Michelle Youngs:
No. It's more for negotiators and a shift change. The next negotiator needs to be able to build a rapport with the person we're trying to talk out of killing themselves, or out of the house, or wherever they may be. Being able to go over what's been said in the conversation will help them direct their efforts with that person.

Assemblywoman Buckley:
I'm a little concerned about exceptions to the warrant rule. They are in our *United States Constitution* for a reason. We try to develop mechanisms to help law enforcement by having judges on standby duty, a phone call away. We have telephonic issuance of warrants and we still have lots of evidence in cases

like that. You also have all of the police officers who were there and you usually have witnesses. It's not like a bad guy is going to get off for good.

[Assemblywoman Buckley, continued.] I worry about erosion of the warrant requirements. Could you tell us if there are other states that utilize these provisions in the situation of a hostage, whether or not the life's been threatened, and in paragraph (b), just barricading and resisting arrest where there is no hostage involved, and suicides?

Michelle Youngs:
I might have to get back to you with some of that information. I can tell you that 12 states are two-party consent, Nevada being one of those. This is some of what the problem is. Take for instance a suicidal subject. Getting a warrant and applying after the fact, we may not be granted one in those types of situations. The evidence portion of that for later use would not come into play because, hopefully, we talk the person out and there are no charges in that case. All we're asking for in those situations is to be able to use it for strategy, or for solving the situation.

Chairman Anderson:
We need that information immediately if we're going to move on the bill.

Assemblyman Mortenson:
I have an email in front of me from a public defender who raises a Constitutional issue because the courts have ruled that warrants must be issued by a neutral magistrate. He also says that the bill is unnecessary because in all the major metropolitan areas, and this would be for the hostage case, like Las Vegas and Reno, there's always a duty officer judge who can be reached by telephone to issue telephone search warrants.

Chairman Anderson:
Are you referring to a communication from Mr. Howard Brooks (Exhibit H) that was sent last night?

Assemblyman Mortenson:
Correct.

Chairman Anderson:
It's the intention of the Chair to have that distributed to the Committee.

Michelle Youngs:
In some situations, a warrant can be obtained. The problem is in some situations it would not apply, and a warrant could not be issued, or time would be a factor.

Assemblyman Mortenson:
If he's always on duty, there's a problem getting a warrant right away?

Michelle Youngs:
There can be a delay. In these kinds of situations, depending on what we're talking to the individual about and what the timeframe is, things happen very quickly and dynamically. A delay of even minutes, although I would say more like hours, could be a matter of life and death in some situations.

Chairman Anderson:
Was any officer charged under the violation?

Michelle Youngs:
No. This situation brought to our attention that there's a large gray area, or concern, with how we were doing our job. There was no criminal charge and none pending.

Chairman Anderson:
Probably never would be.

Assemblyman Horne:
First you said minutes, and then you said hours. When you come upon a scene and you want to get a warrant, if the email (Exhibit H) is true on this on-duty judge, map for us the time it takes once you get on the phone to contact the judge, to get one of these types of warrants. What kind of time are we really looking at?

Harry Dixon:
The time that we're talking about could be anywhere from, in my experience, 30 minutes to 4 hours, depending on whether or not a deputy district attorney and the judge are available immediately. These are all factors that we can't cut in. This bill is important for the immediacy of having the negotiator be able to contact the person inside and start negotiations. We couldn't do that without getting the warrant prior to the recording.

Assemblyman Horne:
You can do that but you can't record, but you still go through that process on doing that. It was mentioned that this is an investigative tool for strategy, but

you can also use that evidence in a subsequent trial. If that's the case, you are asking us to allow you to skip a step, so to speak, and obtain that warrant. While you say it's so you can diffuse a situation, after it's diffused you're going to use the information you obtained through the recording in the subsequent prosecution of this person. You've skipped the step of a detached and neutral magistrate to make sure you've done this, and if it's a true emergent situation, it seems like other actions would be taken up by another law enforcement officer.

Harry Dixon:
Yes, we are skipping a step, and the step is the immediate obtaining of a warrant for the intrusion. Are we skipping the judicial review? No, we are not. I believe the bill provides for that review. As a police officer, I think it's important that be reviewed because abuse is not what we want. We want the ability to effect adequate negotiations quickly, and to come to a successful conclusion. If we don't have any control over what happens with those communications, by all means that's a problem that we need to address.

Assemblyman Carpenter:
Would you explain to me on page 2 of the bill, lines 32 to 38, what kind of a situation you would have to use a recording in?

Michelle Youngs:
You're asking about paragraph (a) in Section 2, subsection 3, and when we would use this to disclose to other police officers? That would be at the scene; the situation that I outlined before where a negotiator or primary person would be relinquishing their duties to another peace officer who would use that information to get up-to-speed.

Assemblyman Carpenter:
Why would that have to be recorded? Under what instances would the recording help you, or not help you?

Michelle Youngs:
In all of our hostage negotiation or barricaded subject situations, recordings have the potential to assist us. These conversations are not interrogations or interviews. If the suspect or subject we're talking to gets onto the subject of crimes or what they've done so far, our first instinct is to steer them away from that and get them into an everyday conversation. In all of our situations those recordings, our notes, and even our memories of what has taken place so far, can help us.

Assemblyman Mabey:
I'd like to follow up on what Mr. Horne said. Let's say this bill passes, how long would it take you to get this accomplished, so you could tap in and start recording?

Harry Dixon:
Are you talking about the equipment?

Assemblyman Mabey:
Right.

Harry Dixon:
Recording for these particular reasons that we discussed today is really an industry standard. Our equipment comes complete with the ability to do that. It would take us no time at all. We use pocket recorders to record over a cell phone.

Assemblyman Mabey:
Push the record button.

Harry Dixon:
Just push the record button and we're good to go.

Chairman Anderson:
Up until this time, the Washoe County Sheriff's Office had been, in these kinds of situations, routinely practicing, and now they are no longer routinely practicing it, but staying within the letter of the law.

Michelle Youngs:
One thing that came up here today is the admission of the recordings into evidence. I would like to make it clear that is not our primary goal. It would not even be our secondary goal. Our only emphasis is to have these recordings for strategy. The evidence admission part of it is not our concern.

Assemblyman Horne:
My biggest sticking point was on the possible use of evidentiary. If it's just for strategy, and if we can somehow draft it to where it's not going to be used in evidence, that would relieve a lot of my problems.

Gary Peck, Executive Director, American Civil Liberties Union of Nevada:
Some of my concerns have already been addressed. I find myself, as I often do, in the uncomfortable position of testifying against a bill not because I am questioning the motives or intentions of those who are putting it forward, but

because there is a disjuncture between the motives and intentions, the language of the bill itself, and what it would actually do. I also have some disagreements with their reporting of empirical facts.

[Gary Peck, continued.] I have spoken to a lot of attorneys about telephonic warrants. I have clerked for a federal judge. It was a different system but he was oftentimes put in the role of duty judge. It is my understanding that telephonic warrants are exceedingly easy to obtain, and it is exceedingly rare that they cannot be obtained expeditiously.

This bill would permit nonlawyers to make decisions about whether or not to drop a tap. Not even a DA [district attorney] is involved in this process. As we've already heard, and I'm not going to be hypercritical of police officers, they are not attorneys. Police officers had routinely, in the past, not understood the law, and that is a problem. There's a reason why a neutral magistrate is supposed to make these decisions. Part of it is their neutrality and part of it is their legal expertise as a magistrate.

This bill would eliminate any of the proper checks and balances by letting the police eavesdrop based solely on their judgment. I think it's important to understand, while we're talking about narrowing to particular, specific limited circumstances, and while I do not question the motives of officers, language is elastic. What does it mean that someone is "barricaded?" What does it mean that it is a "hostage situation, whether or not someone's life is being threatened?" Does that mean the police show up and say, "Joe Schmoe is sitting in his house with his wife, we think this is a hostage situation, let's drop a tap." Again, it's not about motives, it's what the bill would allow officers to do in those circumstances.

It would also compromise the system of checks and balances, and the normal workings of our adversarial system of justice, because typically, both sides are not heard when a judge conducts an in-camera review to determine the admissibility of evidence. In other words, when you apply for a warrant telephonically it's recorded, a record is made, and lawyers have a basis in our adversarial scheme to challenge the appropriateness of the warrant and the admissibility of the evidence.

When you are in a situation where there are in camera reviews, oftentimes that's the judge, either on his own, or simply based on whatever reports or facts are given him by the police, making a determination about whether or not the evidence is going to be introduced.

[Gary Peck, continued.] In short, the bill is profoundly flawed. I appreciate Assemblywoman Buckley's question about other states, but I think it's important to acknowledge that Nevada is a state that places a high value on privacy and limits on government. It is a state with a very strong, very long, very rich history of skepticism about government overreach. I believe that is a good thing and I think it ought to be the subtext when we're thinking about this bill. Committee members have already articulated a lot of our concerns. If this bill is going to be passed it really needs to go to work session, and I believe there needs to be a warrant requirement incorporated into this bill.

Assemblyman Horne:
I mentioned that I was okay if we didn't allow anything found within the taping of it to be used in evidence, and if it's solely used for strategy to diffuse the situation and bring it to an end. Wouldn't that take away most of your concerns?

Gary Peck:
That would make it a better and more acceptable bill, but I still have a concern about officers on the scene skipping a step, if you will, when we're talking about privacy issues and dropping wire taps. It is my understanding that perhaps the Committee might want to hear from someone else who has even more expertise than I do that telephonic warrants are simply easy to obtain. This is not a long, arduous, and drawn out process. There's a reason why there are duty judges. They are typically available. They are available on the spot, can issue the warrants, and they rarely deny a request for such a warrant.

Fritz Schlottman, Administrator, Division of Offender Management, Nevada Department of Corrections:
Perhaps one of the items that you would be interested in is the effect of recording upon staff. We found that when we started videotaping cell extractions, we had a marked decrease in the number of staff misconduct. The fact that they knew they were going to be on camera during that process, tended to act as a barrier to inappropriate conduct during that cell extraction.

Knowing some of the old war stories of the Department, I believe that having that conversation taped would be beneficial to the State and to the Department in eliminating some of the past behaviors that got us into trouble. I won't mention names until folks have retired from the Department. It was fairly common strategy back in the bad old days of the early 1970s and 1980s that if you had a hostage situation, and you had one at that time almost weekly, the conversation would go like this: "You give me that hostage or I'm coming down to blow your head off." If that conversation is being taped you're not going to

say that. There is a benefit to having that conversation taped; it eliminates staff misconduct on the part of staff and police officers.

Chairman Anderson:
Wouldn't you be able to put it on the speaker phone? If you put it on the speaker phone you would get around all this. That's how to do it even in the hostage situation, recognizing Nevada is kind of protective in this area, even if we're only 1 of 16 states that does not allow two-party conversation taping.

Fritz Schlottman:
You would have to rely on staff to actually do that. If you wanted to engage in hardball practices, you're certainly not going to broadcast it where there are going to be witnesses.

Chairman Anderson:
Nor would you do it even if we pass this legislation, if you were going to engage in hardball practices at the prison.

Fritz Schlottman:
We found that with the taping of cell extractions, you need to put in an administrative regulation that taping is required. For example, if you're going to do a cell extraction you must have the camera going. If you're going to start providing phones and having conversations between inmates and staff in regards to hostages, it must be taped. This eliminates the ability to get around that situation.

Chairman Anderson:
The Chair is of the opinion that at your facility and at all the juvenile facilities, cell extractions should be taped to eliminate those kinds of problems that put the State in jeopardy of being sued by the prisoner. You must make sure that there is a clean extraction, not just at your facilities at the State level, but also at the county and local level of police officers, whenever that kind of intrusion is taking place.

Let's close the hearing on A.B. 512. Let's move to the last bill of the day A.B. 516.

Assembly Bill 516: Provides immunity from civil liability to employers for disclosing certain information concerning current or former employees to school districts and charter schools. (BDR 3-416)

GeorgeAnn Rice, Associate Superintendent, Human Resources, Clark County School District, Nevada:
The Clark County School District currently has 11,253 support staff personnel. These are full-time, part-time, substitutes and temporaries, and everyone employed by the district. These are people who are employed in capacities other than those defined as a licensed person, or teacher, or an administrator.

During the current school year, we have hired thus far 1,664 employees, and 1,128 have left our employment for various reasons. When a person is hired to work for the Clark County School District, we ask for self disclosure of any arrest, charge, or conviction related to felonies including drug-related offenses, sex-related offenses, and violence-related offenses which includes domestic violence. We also ask for any investigations by employers, licensed hearings, revocations, and so on.

We then ask for professional references and we ask those professional references or former employers for knowledge of similar situations. Then we do an FBI [Federal Bureau of Investigation] check through Metro [Las Vegas Metropolitan Police Department], through the Central Crime Repository at the Nevada Highway Patrol, and then the FBI for actual arrest charges or convictions.

Most, if not all, nongovernmental former employers will only give us the hiring and the termination dates for the former employee. This proposed amendment to the law says that if an employer gives information to a school district concerning a former employee, they will not face civil liability except under the conditions that are listed in subsection 4 of the bill.

We would like to ask for an amendment that says that responses given to school districts are presumed to be in "good faith" not meeting any of the conditions outlined in Section 4. Our reason for doing this is so we can have another source of information concerning people we are bringing into classrooms, bringing in to drive school buses, and so on. We need as much information as we can get. Because of the possibilities of civil liability out there, even defending a case they will win, we are finding that within our own city and our own state, nongovernmental employers give us only the start date and the stop date, and they will not tell us anything else.

This is an attempt to protect them and the children and the other employees that will interface with the people that we're hiring.

Chairman Anderson:
Are you suggesting an amendment to the bill?

GeorgeAnn Rice:
Yes.

Chairman Anderson:
I want to make sure that I understand. The amendment would be to remove the requirements mentioned currently in what would now be the new Section 4 or the existing law under Section 3? It says people cannot act with malice or ill will, disclose information they believe would be inaccurate, disclose information which has no reasonable grounds, or intentionally disclose reckless or inaccurate information. Do you want that all taken out of the bill?

GeorgeAnn Rice:
No, we do not. We're asking that the responses given to school districts are presumed to be given in good faith. They are presumed not to have met the conditions listed under subsection 4. All we're trying to do is shift the burden of proof to the person who is saying that the employer has given information in bad faith. There would be a presumption that there was good faith when this information was given.

Chairman Anderson:
Under current law, Section 3, NRS 239B.020, you're not going to have to meet those requirements still?

GeorgeAnn Rice:
The burden of proof would be on the person who is claiming that the employer did not meet those or, in other words, gave the information in bad faith. It's just a shift for school districts and only for information given to school districts. There would be a presumption that that information was given in good faith. Otherwise, your employer is going to say the expense involved in defending these lawsuits is not worth giving the information to the school district.

Chairman Anderson:
We're shifting the burden of proof dramatically with your suggested amendment, which you have not submitted ahead of time.

GeorgeAnn Rice:
No, I did not.

Chairman Anderson:
Have you sent up the suggested language change?

GeorgeAnn Rice:
It will be there before the end of the day.

Chairman Anderson:
You didn't let anybody know about it in advance?

GeorgeAnn Rice:
I told the LCB [Legislative Counsel Bureau] when the bill was originally crafted that we needed that presumption in there, and they indicated that when it came before the Committee, I should bring it up at that time. At least that was my understanding.

Chairman Anderson:
This is a piece of legislation that was requested by Clark County School District, and I presume that you had an opportunity to review it before it was introduced. You brought to the attention of the LCB your concern about that additional requirement?

GeorgeAnn Rice:
Yes, I did.

Chairman Anderson:
Rather than send it back for redraft you thought it would be better to get it in, rather than not get it in at all?

GeorgeAnn Rice:
I believe that they were drafting it on the final day that it could be submitted, and so they didn't have time to do the amendment that we asked for.

Assemblyman Horne:
My concern is with subsection 2, paragraph (c), "an illegal or wrongful act committed by an employee." I don't know if that should be within the scope of that employee's duties. It's one thing if an employer caught one of their drivers drinking on the job while driving, it's another thing if the employer has learned of some wrongful act that's outside of the scope of their employment, and then conveys that to you.

GeorgeAnn Rice:
Our questions deal with their performance while on the job, and then of course we are sending the fingerprints of all employees to the FBI, the Nevada Highway Patrol, and through the Las Vegas Metropolitan Police Department. Where there's actually been an arrest, a charge, or a conviction, we're getting that information through the FBI. It takes a number of months to get that information. What we're really after here would be if an employee, for example, was sexually harassing another employee. Or, if a person was a driver for one of the hotels and had been found to be a reckless driver and was being let go

for that purpose, and then they come to us to be a bus driver. There would be no way that we would know that information if the employer only gave us the start date and the stop date, which is what we are getting now. This is limited to school districts just for applicants.

Assemblyman Horne:
We have that. It's just that it's kind of broad, and it would allow an employer to give you information on any wrongful act that they may have knowledge of, but doesn't apply to their job. I would like us to address that, if this moves forward.

GeorgeAnn Rice:
In the existing language under Section 1, that's already provided.

Assemblywoman Buckley:
When I was reading this bill originally, before you brought up the proposed amendment and change, I was wondering why you were requesting the bill at all. It seems like the only thing you'd be changing is to more specifically say that a school district or a charter school can request this, and we already use the term "employer" to cover every employer. So, if the school district is acting as an employer, it seemed redundant to me. Could you address that?

GeorgeAnn Rice:
If you look in subsection 1, it says, "... an employer who at the request of an employee ..." That language is changed in the section that deals with school districts, in that the school district may request that information from an employer without the employee saying to the employer, "I want you to release this information." We get a general release when they sign the application that all previous employers may speak to us, but because of their potential liability, we don't get full information. It's not only the employee speaking to the employer saying, "Okay, it's alright to give this information," but it's through the signing of the application by the employee that they give us permission, in effect, to contact any previous employer to seek information. It was our intent to have the presumption of "good faith" in there, which would not be part of Section 1.

Assemblywoman Buckley:
If every applicant is required to allow you to contact every employer, which is correct in my opinion, why would you need an additional section to say that? You could, by your policy, require every employee to list every employer and require them to give their consent as a condition for their application, correct?

GeorgeAnn Rice:
They do that, however, if you look at the language of subsection 1, "... who, at the request of the employee ..." We have employees everyday who will skip an employer, or who will leave a space in their employee history. As we examine the application we say, "Wait a minute, we have a missing part here from February until June." When we check the application and do further analysis we can figure out where the person worked, and we seek out that information, because it is a clue to us that the person did not want us to contact that particular employer. The employer is not listed on the application. There's a question then as to whether their permission covered the employer's that they did not list on the application.

Assemblywoman Buckley:
It would seem to me that if someone did that you could require them to give their consent, or just not hire them for failing to disclose one of their employers. With regard to the presumption, I think it would be very difficult to process that without giving notice to people two days before the deadline. That's a very significant change. We worked on this statute in good faith with employees and employers for hours. When this law was initially drafted, there was concern by employees that they would be blackballed. I think it was the Chamber of Commerce that negotiated the final language with us and the employees at the table. I would be hesitant, with so little time and with so little notice to anyone, to upset the balance we tried to strike in our laws.

GeorgeAnn Rice:
That's why we're limiting this and saying only information that is given to a school district.

Chairman Anderson:
Clark County School District is the fifth largest school district in the United States?

GeorgeAnn Rice:
That is correct.

Chairman Anderson:
The largest single public employer in Clark County, and maybe even in the state of Nevada?

GeorgeAnn Rice:
Yes.

Chairman Anderson:
Largest single employer?

GeorgeAnn Rice:
I believe that with the MGM merger they went ahead of us, as far as employers in general.

Chairman Anderson:
I guess they have 5 more people than you do now? It's a precedent setting piece when you have the largest employer move this way.

Christina Dugan, Director, Government Affairs, Las Vegas Chamber of Commerce, Nevada:
Ms. Buckley is correct in noting that the Chamber was a part of the original negotiations on this section. I believe it was our lobbyist, Sarah McMullen, who originally participated in that discussion. We're here today to say that we understand the spirit and the intent that the school district is trying to put forward. We want individuals who do not have serious background problems and who are good citizens to teach our students, and be in charge of them, and who are able to instill the best characteristics and skills into our students.

To that end, we are supportive of their efforts, and we would be supportive of the issue of the good faith aspect and altering the burden of proof, but that may not be something that this Committee wants to go as far as to do.

Chairman Anderson:
Kind of a broad step.

James Jackson, Legislative Advocate, representing Nevada State Education Association, Las Vegas, Nevada:
I had originally indicated that I was somewhat neutral on this. However, I think I'm going to have to change it from being neutral to being somewhat in opposition because of the presumption of good faith suggestion that has been made. That's a substantial change to what I understood was the original idea of this bill. I did not have an opportunity to speak with Ms. Rice, but I did speak with Mr. Craig Kadlub this morning about our concerns regarding the broadness of this bill. I was assured that this was simply so they could speak with private employers.

I understand the spirit and intention of this, but some of the concerns that have been expressed by the Committee members are correct and valid, and need to be more fully vetted. I realize we've got a very short time to do that. Mr. Kadlub and I discussed that this was designed to allow the districts and only the

districts to go to private employers, and we wanted to make that clear. I presented a 4 or 5 word amendment (Exhibit I) to Mr. Kadlub, and he was okay with inserting in the proposed subsection 2 "a private or nonschool district" employer, so that we're clear as to what their intent is here.

[James Jackson, continued.] I don't like the suggested amendment of the presumption of good faith.

Chairman Anderson:
Does this give the school districts, not just Clark County School District, but any school district in the state, the opportunity to put fellow workers in danger of tattling on other workers at the site?

James Jackson:
That was the concern I expressed to Mr. Kadlub, and when he assured me that the intention was to allow them to get to private employers only, we suggested the very small amendment (Exhibit I).

Chairman Anderson:
If we follow the suggestion of Ms. Rice and remove the question of the responsibility of malice or ill will, how would the school district know if somebody had done so recklessly or intentionally? For example, if another school district was getting rid of their employee and happy to see that person go, and didn't disclose the information they should have.

James Jackson:
I don't know that the district necessarily would. The problem I have with the suggested amendment is that it is giving full faith and credit, if you will, to whatever that employer may be sharing. As I read the current law, it imposes a duty on whoever is making the disclosure to not do it with malice or ill will, or to relay information that's inaccurate. Obviously, the school district is going to be relying somewhat on that, but we can't remove the burden off of the former employer to be fully in compliance with the statute.

Gary Peck, Executive Director, American Civil Liberties Union of Nevada:
Mr. Jackson articulated my concerns better than I could articulate them. If it was up to me, in subsection 4, paragraph (d), I would add "gross negligence" to the list of actionable offenses, but it's the burden shifting that really concerns me.

Chairman Anderson:
Let me close the hearing on A.B. 516.

[Entered into the record on A. B. 551, remarks from Judge David Hardy (Exhibit J) from the Second Judicial Court in Washoe County.]

[Adjourned the meeting at 11:01 a.m.]

RESPECTFULLY SUBMITTED:

Jane Oliver
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 12, 2005 **Time of Meeting: 8:19 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Meeting Agenda
A.B. 551	B	Jennifer Henry, Eighth Judicial District Court of Nevada, Clark County	Letter to the Members of the Assembly Judiciary Committee regarding amendments to A.B. 551.
A.B. 551	C	Dara Goldsmith, Attorney, Goldsmith and Guymon, Las Vegas, Nevada	Letter to the Members of the Assembly Judiciary Committee regarding amendments to A.B. 551.
A.B. 551	D	Chairman Anderson	Summary of A.B. 551
A.B. 490	E	Eva Garcia-Mendoza, Attorney and Counselor at Law, Las Vegas, Nevada	• Memorandum from the Office of the Commissioner regarding "Practice of law by unlicensed "immigration brokers" • Memorandum from the Office of the General Counsel regarding "Practice of law by unlicensed "immigration brokers"

EXHIBITS - Continued

Committee Name: Committee on Judiciary

Date: April 12, 2005 **Time of Meeting: 8:19 a.m.**

Bill	Exhibit	Witness / Agency	Description
A.B. 490	F	Patricia Morse Jarman, Commissioner, Nevada Consumer Affairs Division	Letter to the Members of the Assembly Judiciary Committee regarding Immigration Assistance Services. In opposition to A.B. 490
A.B. 512	G	Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and representing the Nevada Sheriffs' and Chief's Association	Amendment to A.B. 512
A.B. 512	H	Howard Brooks (not present), Deputy Public Defender, Clark County	Email regarding Constitutional concerns about A.B. 512
A.B. 516	I	James Jackson, Legislative Advocate, representing Nevada State Education Association, Las Vegas, Nevada	Amendment to A.B. 516
A.B. 551	J	David Hardy, Second Judicial District, Washoe County (not present)	Email regarding definition of "interested person" and requirement to serve notice on each known interested party