

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

**Seventy-Third Session
March 17, 2005**

The Committee on Judiciary was called to order at 8:14 a.m., on Thursday, March 17, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Kathy McClain, Assembly District No. 15, Clark County
(part)
Assemblyman Joe Hardy, Assembly District No. 20, Clark County (part)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Jane Oliver, Committee Attaché

OTHERS PRESENT:

Stan Olsen, Executive Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department; and Nevada Sheriffs'
and Chiefs' Association, Las Vegas Nevada
Patricia Longworth, Detective, Henderson Police Department, Sexual
Assault Unit, Henderson, Nevada
Dan Coe, Police Sergeant, Las Vegas Metropolitan Police Department,
Problem Solving Unit, Las Vegas, Nevada
Joe Roy, Police Officer, Henderson Police Department, Problem Solving
Unit, Henderson, Nevada
Ben Graham, Chief Deputy District Attorney, Clark County District
Attorney's Office; and representing the Nevada District Attorneys
Association
Stephanie Scales, Private Citizen, Henderson, Nevada
Brenda West, Private Citizen, Henderson, Nevada
Michelle Youngs, Deputy Public Information Officer, Washoe County
Sheriffs' Office, Washoe County, Nevada
Jonathon Reynolds, Intern, Assemblywoman Angle's Office, and Teacher,
Sparks High School, Sparks, Nevada
James Leavitt, Attorney, Law Offices of Kermitt L. Waters, Las Vegas,
Nevada
Brian Padgett, Attorney, Law Offices of Kermitt L. Waters, Las Vegas
Nevada
Laura Fitzsimmons, Attorney, Law Offices of Laura Fitzsimmons,
Las Vegas, Nevada
Madelyn Shipman, J. D., Attorney, Legislative Advocate, representing
Nevada District Attorneys Association
Buffy Martin, Governmental Relations Director, American Cancer Society;
and Legislative Advocate, representing American Lung Association,
American Heart Association, and Nevada Tobacco Prevention
Coalition
Jim Avance, Legislative Advocate, representing Nevada Retail Gaming
Association
Peter Kruger, Legislative Advocate, representing Nevada Petroleum
Marketers and Convenience Store Association, Reno, Nevada

Tony Sanchez, Legislative Advocate, representing Herbst Gaming, Inc.,
Las Vegas, Nevada

Sam McMullen, Legislative Advocate, representing Nevada Restaurant
Association; Retail Association of Nevada; and Las Vegas Chamber
of Commerce

Chairman Anderson:

[Called meeting to order. Roll called.]

It is my intention to take the Speaker's bill first, Assembly Bill 190.

Assembly Bill 190: Prohibits person from entering upon certain property, with intent to surreptitiously conceal himself on property and peer, peep or spy through opening in building or other structure used as dwelling. (BDR 15-631)

Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; representing the Nevada Sheriffs' and Chiefs' Association, Las Vegas, Nevada:

[Read from prepared testimony, Exhibit B.]

This bill is intended to prohibit people from going onto someone's property, concealing themselves, and basically peeping through their windows.

I'm presenting this bill, as the Chairman stated, on behalf of Speaker Richard Perkins who is very aware of the terror and the fear that these suspects put on the victims, when they are involved in these offenses.

These suspects are repeat offenders. They are most times progressive and they are always dangerous. Law enforcement responds to these calls on a regular basis, and many times their hands are tied as to what they can do.

Mr. Chairman, with your permission, in Las Vegas I have three members of law enforcement and two victims that would like to testify on this bill.

Patricia Longworth, Detective, Henderson Police Department, Sexual Offender Unit, Henderson, Nevada:

I'd like to present to the staff today a case that we have had. It is a 20-year, tier-one sex offender that has terrorized the Green Valley area by going to apartment complexes and peering into the windows of different apartments, and watching these women, numerous times, over and over again.

We've had surveillance put on this person but there was not much that we could do. We couldn't take him into custody—our hands were tied. He was just going into the complexes, peering in, and leaving.

On Valentine's Day of this year, we had our surveillance team, our PSU [Police Surveillance Unit] follow him to a specific apartment complex, where he did indeed peer into different windows of the apartment complex. At one apartment complex window, he had hidden himself up on the side of the window in the darkness, and began to masturbate.

During that time the officers approached and arrested him. Up until that point, I had numerous victims that felt terrorized knowing he was in the apartment complex, and decided to leave the state and move elsewhere. Due to the fact there was nothing more we could do to help them until something had happened.

It's a shame to have to wait until something like this happens. We should be able to stop it before it gets that far.

Dan Coe, Police Sergeant, Las Vegas Metropolitan Police Department, Problem Solving Unit, Las Vegas, Nevada:

I'll provide a very brief history, with regards to the law, a little bit of background, and why we need it for the LVMPD [Las Vegas Metropolitan Police Department] jurisdiction [Read from prepared testimony [Exhibit B](#)].

On August 20 of 1992, the Supreme Court decided the case of *State v. Richard* [836 P.2d 622 (1992)], and in that case they ruled that Nevada's Prowling Statute [then part of *Nevada Revised Statutes* 207.030] along with the Las Vegas Municipal Prowling Code, [Las Vegas Municipal Code §10.74.020] were both unconstitutional.

State v. Richard followed on the heels of a United States Supreme Court decision which is *Papachristou et al. v. City of Jacksonville* [405 U.S. 156 (1972)], which stated that prowling statutes would be "void for vagueness" if the statute didn't give fair notice of

what conduct was forbidden, and where the statute encouraged arbitrary and erratic arrests by police.

[Dan Coe, continued.] The unconstitutional statute, the previous *Nevada Revised Statutes* 207.030, basically forbid vagrancy and therefore, it was ruled unconstitutional.

The proposed statute, as proposed today, is modeled after legislation that's already been passed as constitutional in other states.

The statute is basically drafted on two propositions:

1. Citizens possess a right to a reasonable expectation of privacy from people entering upon their property, who want to conceal themselves, peep, or spy upon the person living inside the house.
2. Citizens should have a heightened expectation of privacy that a stranger can't intrude upon their property with a recording device, or a deadly weapon.

The need for legislation in the Metro jurisdiction (LVMPD) is based upon the fact that in 2002 we had 1,841 prowler calls during that calendar year. The following year we saw an increase to 1,944 prowler calls, and year to date, as of 2004, and this reporting period was from January through October of 2004, was 1,436 prowler calls.

Once such example during this period, was a call where we had LVMPD [Las Vegas Metropolitan Police Department] officers dispatched to where a female was home alone in her bed, with her bedroom window open. She heard a noise outside of her window and went outside, looked, and saw a male hiding himself behind some bushes, underneath her window. When she asked him what he was doing in her yard, he basically told her that, "He was only listening, and he had issues," We put that in quotes because that's what he said. He then ran away over a back wall. When patrol officers arrived they recovered a small knife from the shrubs where he was hiding. The problem we had with this is, there's no law, since 1992, to arrest for prowling, and it didn't qualify for an attempted burglary because there was no intent to make entry to the home. Therefore, there was no way to arrest this individual.

[Dan Coe, continued.] As of two days ago we had a subject go into a backyard with a ski mask on his face, and when seen by a neighbor he ran back out to the street. Officers were also able to detain him, but we have no legislation to arrest him for that.

Chairman Anderson:

Are you going to, Officer Coe, explain the sections of this bill? Is that one of your tasks? How and where those things are covered here?

Dan Coe:

I do have it with me, and I can cover the relevant portions of it, if necessary.

Chairman Anderson:

Let me give you a little bit of help, so that we have clarity here. We did take up this issue in 1993, if you're looking at NRS 207.030, which gives a prohibited act penalty list, which you are making reference to. We did deal with this statute at that time, and if you look at the bottom end of the statute, miscellaneous crimes there, you'll see that when we did this, the former paragraph, which makes it unlawful, had been clarified.

For members of the Committee let me say, Section 1, subsection 1 [of A.B. 190], prohibits a person from knowingly: entering the property of another, or his own rental property, and secondly, in that first paragraph, lines 3 through 9, "the intent to conceal himself, peer, peep, or spy through an opening of a dwelling, on the property," and intent is the big premise that's covered in Section 1, subsection 1. In subsection 2(a), the violation is possession of a deadly weapon, and in (b), the penalty if a person possesses a camera but not a deadly weapon, and then in (c), if a person did not possess a deadly weapon or a camera, relegates it as a misdemeanor.

In (a), we have a maximum term of six years—felony—in other words. Then we go to a gross in (b), and a misdemeanor in (c), and then to exempt law enforcement officers conducting a criminal investigation, since they occasionally go on to such premises. Subsection 2 provides that a trespass under NRS 207.200 amounts to a violation of Section 1 of the bill, the person is guilty of this misdemeanor. Those are the pertinent parts of the bill.

We have felony, gross misdemeanor, and misdemeanor.

**Joe Roy, Police Officer, Henderson Police Department, Problem Solving Unit,
Henderson, Nevada:**

What I'd like to speak about today, is an individual that we've been working with for approximately a year. On March 12 of last year, I was dispatched to a call at a residence referencing an individual being in the back yard.

On initial arrival, this individual was gone. In speaking with the victim we got a pretty good description. I remember that the description matched an individual that was arrested several years prior, which I assisted in that arrest, and he was also doing the same thing.

We started putting two and two together. We started working with various crime statistics in the neighborhood. We started going around the neighborhoods talking to the victims of the last couple of years, and showing photo lineups to these people. They were positively able to identify our suspect, and we were able to start making arrests on this individual, based on the fact that he was going back to the same yards and terrorizing these people.

We were able to put charges of trespassing and stalking on him. Unfortunately, that wasn't enough. He would get sentenced to 10 or 15 days in jail, he would get out, and he would continue the same activities.

It progressed to where his activities were getting bolder, and more and more violent. Eventually, we were able to put this individual into the State Prison System, based on the fact that he was breaking into cars, stealing wallets, using credit cards, and attempting to break into houses. Currently, he is still in the prison system, but even as of today, we're still working cases on this individual. Right now we have 14 pending cases of stalking and trespassing on him, when he gets out of prison.

Chairman Anderson:

Mr. Horne, questions for any of the three witnesses?

Assemblyman Horne:

First of all, one thing that concerns me, I think there may be an area this doesn't capture. In Section 1, paragraph 1, we've got the elements of they have to "knowingly enter with the intent to surreptitiously conceal themselves, to peep." In 2(b), you've got, "possession of photographic or digital camera or video camera."

I think of a scenario of a person at the gym, with their video phone or whatever, taking pictures that they probably shouldn't be taking pictures of, but they're members of the club, and they may not have entered for that purpose. They are

not trespassing, but they see an opportunity to take an illicit photo. I think that we might want to capture the persons who do this. It doesn't seem to capture them.

Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office, and representing Nevada District Attorneys Association:

For the veterans on the Committee, and for those of us who were just around this issue of photographs, video voyeurism—we've been bandying this about for a long, long time. In looking at this, this is kind of video voyeurism legislation also, but it probably does not cover your issue, Assemblyman Horne, that if you're at the gym and then you decide—an opportune image appears—it would not cover this.

Sometimes, we have to cast a little bit wider net, and maybe miss a few things. This would address a lot of the issues where you are renting a place from someone, who then sneaks in and takes pictures of you, or may have it set up ahead of time. It would not cover going in, and then subsequently, having the intent to do it, I don't think.

Assemblyman Horne:

The scenario that Sergeant Roy mentioned, the individual that's incarcerated now but they have 14 pending cases. If we pass this and it becomes law, it would not affect those cases. I bring that to your attention.

Chairman Anderson:

The Chair is kind of curious, relative to the question that was raised by Mr. Horne and Mr. Graham. If the person happened to have the video phone with him at the time, and saw the opportunity and did it, that's one scenario. If he purposely brought the phone, or the video camera with him to the gym, with the intent of taking advantage of that opportunity, is the "intent" scenario here, which is a clear element in this particular one, which is the one that you would have the burden of proving, I presume?

Ben Graham:

That's correct. We could take a look at some thoughts that are floating around on the video voyeurism that might, I don't want to say broaden, but would maybe cover what Mr. Horne is thinking about. We might be able to get it all into one piece of legislation.

Chairman Anderson:

I don't want to endanger the bill with this particular thing, but that's not apparent, the intent of this.

Ben Graham:

It isn't.

Assemblyman Mortenson:

If a person happened to be carrying a pocketknife, would that be considered a deadly weapon? He's captured with a deadly weapon outside of a window that he happens to be peeking into. It doesn't say utilize a deadly weapon, it says possesses.

Stan Olsen:

Standard operating procedure for law enforcement is, if somebody has a penknife, we don't consider that really a weapon, unless a person uses it with that intent. If the person has a small little penknife, it probably would never get past the watchful eyes of the District Attorney's Office anyway, and even if we decided to book him for it—but most times we would not. If it was a larger knife, like a Buck knife or something of that nature, then absolutely.

Assemblyman Mortenson:

The other thing I was wondering about is, I don't think the intent here is if a peeper just happens to have a camera-type telephone in his pocket or a telephone, a lot of them just record and don't take pictures, but they are audio recording devices. Should the bill say, "Is utilizing" or as it does say, "Possess?"

Ben Graham:

That's almost analogous to having a firearm in your belt just to protect yourself from snakes, but you're still armed just in case. I think if you start adding too many hurdles to go over, you're not answering the intent of the bill. You don't have a photo camera, Mr. Chairman, unless you intend to take photos somewhere along the line.

Assemblyman Mortenson:

No, I'm talking about a telephone.

Ben Graham:

Telephone.

Chairman Anderson:

I think the blade has to be over 6 inches to be considered the threat. Isn't there a statutory question relative to what a weapon represents, relative to a knife, in particular, dirk, or dagger?

Stan Olsen:

Yes, there is some law on that, and it covers the shank of the blade all the way up, and it has to reach 3 1/2 inches.

Assemblywoman Gerhardt:

I don't have any problems at all with this bill. I think there's definitely a need. I am curious, however, how this would affect private investigators?

Stan Olsen:

Private investigators, as best as I recall, have no right to get onto private property in somebody's backyard anyway, which is what we're trying to cover here, somebody's private property. They can photograph something from across the street or someplace where they have a legal right to be, but I don't [know], and I'm no attorney, I'll have to turn it over to Mr. [Ben] Graham anyway. I don't believe they have the legal right to get onto somebody's private property without permission, even to do their work.

Chairman Anderson:

Ms. Gerhardt, maybe we'll explore that particular question and make sure we get back to you, because the common-interest communities, common ground, is only for those residents of the apartment complex, not necessarily for everybody in the complex, and it would not be unusual for a private investigator to have gained access to the grounds, not necessarily to the apartment. So, maybe it's a stronger question than we might anticipate. The gated communities present a different set of problems. We'll have Research take a look at that for us.

Assemblyman Carpenter:

I have a couple of questions. I think one of the witnesses mentioned that they were able to charge this one suspect with trespassing. I'm wondering why they couldn't do it on the other one, if he'd been doing this for so long. Where does the trespass law come in?

Stan Olsen:

With your permission, I'd have to defer to the detective down south that brought that up, because I don't know what the particular incidents were, and what the details were of their case.

Joe Roy:

It was my particular case. The way we were able to put trespass on this individual is, we were able to show that he was continuously going over closed, blocked walls with fences, and that he was going back repeatedly, and that's how we were able to do the trespassing and stalking, because he was showing a propensity to continue the same type of activity at the same residence.

Assemblyman Carpenter:

In the bill itself, line 8, it talks about a "building structure," and then it has an "enclosure of any nature used as a dwelling." "Enclosure," would that suffice as a dwelling? It's a question for Legal, I think, but seeing that, Mr. Graham is here.

Chairman Anderson:

Bill drafter's choice it may be.

Ben Graham:

If you take a look at our statutes covering property offenses such as burglary and that sort of thing, it's very, very broad. It has to be used as a dwelling, or on private property, or premises. I'm not sure why that language was in there.

Chairman Anderson:

We'll have Legal take a look and give us an explanation for that one.

Assemblyman Mabey:

Following up on Ms. Gerhardt's thoughts, what if an owner of an apartment complex had a concern about a neighbor and, obviously, I think it would be inappropriate for him to be peeping for the reason this bill is, but would there be any legitimate reason for him to be concerned, or spy on, what might be going on inside of his apartment, or a home he might own and rent out? Just concerned that maybe somebody accidentally would be picked up by this law, and he was really trying to do something worthwhile and wasn't peeping, but he was spying.

Ben Graham:

Normally, in any rental situation, there's clauses in there that indicate what a landlord can and cannot do. I think if they are following their contract and their law, they would not fall under this. And again, you're looking maybe at an isolated situation where, if it's covered under his authority to inspect, I think he would be alright, but if it goes beyond that, then possibly they might be liable for inappropriate conduct.

Dan Coe:

We would very much like to see this bill pass, to assist us in catching these people who are, in fact, terrorizing residents of southern Nevada.

Chairman Anderson:

Obviously, we're looking for statewide legislation, not just those folks in southern Nevada. I just thought I'd remind you that we have a broader spectrum of the view from here, and I appreciate your concerns of the constituency that you try to protect.

Stephanie Scales, Private Citizen, Henderson, Nevada:

I would like to tell you my story of being terrorized by our neighborhood peeper, which I do not take lightly, as my experience has been not a good one.

In 2003, my first experience was on a Sunday evening as my husband and I had gone to bed. My baby started to cry, and I got up to get her a bottle. I didn't turn the lights on going into my front room back into my kitchen area, and I noticed out of the corner of my eye, a man that was bent over approaching my back door. I froze, did not know what to think of it, screamed, and my husband ran out and chased this man off.

Henderson Police arrived and searched my backyard, and said it looks like he had been in my backyard for some time watching us and, obviously, felt the time to approach is when we had gone to bed.

This situation shook me up quite a bit. I took it upon myself to put lights up around the house, cameras for surveillance, and purchased a weapon because, obviously, my family could be in jeopardy by this person.

In 2004, I was taking a shower at 8:00 a.m. in the morning. My husband had left for work. My daughter and I got out of the shower, neither clothed, and I took her and set her on the bed to put her clothes on. As I looked to the left of me, again, I could see a movement. About 12 inches from me stood this man looking in my window, watching me dress my daughter and I had no clothes on.

I called 911. The operator asked me to go to the front of my house to see where this man had gone. I had watched him leave my backyard in the same fashion, bent over and sneaking out of my backyard. He then proceeded to go to my front door and tried my front door. The 911 operator kept me on the phone and told me to wait, and the Henderson Police then arrived. Officer Roy came. I was hysterical, obviously, in fear for my daughter's and my safety.

[Stephanie Scales, continued.] Again, we've taken measures and put cameras up. My three-year-old daughter watches our surveillance cameras because I never know when he will be back, and he will be back, because he, obviously, continues to commit these crimes in our neighborhood.

This isn't a light matter. He has changed my life. My quality of life has changed, and he's affected me and my family greatly.

Chairman Anderson:

Ms. Scales, I want to assure you that we don't take it as a light matter either.

Brenda West, Private Citizen, Henderson, Nevada:

I live in Henderson, Nevada, in the same neighborhood that Stephanie Scales lives in, except I live across the street from our Peeping Tom. We moved into the neighborhood in 1999, and were immediately warned by a neighbor that we had a Peeping Tom living across the street from us. That neighbor had been warned by a neighbor from a previous neighborhood that the Peeping Tom had lived in.

We were warned about it, we knew. We started getting our homeowner's association newsletters. We noticed every month there was an alert regarding the peeper, and things disappearing off of patios, and such.

Finally, in 2002—actually, let me tell you about another thing he did, with obviously talking about his stability. One night, the same neighbor that had warned us, came home and there was a gas can turned upside down on one of his plants. The peeper was outside and the neighbor said to him, "Did you do this?" He said, "Yes, consider it a warning." The neighbor went in the house and called the police. The police came out and went in the house, and they ticketed the peeper. After the police left, the peeper said to the neighbor, "If you ever call the police on me again, you and your boy are in danger." He has a three-year-old boy. Excuse me.

He has done other things in the neighborhood, he's just not stable. In August 2002, he was arrested for peeping at a young girl, a 12-year-old girl, who lives five houses down from him. He had been in another neighbor's house during the early morning hours. She had noticed that her motion detector light had been going on. When they did arrest him, he was charged with two counts of trespassing, one count of annoying a minor, and one count of evading a police officer.

He received six months for each charge, and only served six months, because he served them concurrently. When he got out, it all began again, and then it

happened to Stephanie. After Stephanie's incident, her second incident, we started canvassing the neighborhood with flyers and talking to neighbors, going door to door, and asking them to write letters to our councilman, if they had had an incident. The number of people who had an incident with this particular Peeping Tom was astounding. He has terrorized our neighborhood and we're all scared.

[Brenda West, continued.] Stephanie, and some of the neighbors and I have all obtained some tapes on concealed weapon training, which we're all going to be taking. We've purchased a pit bull. We have put surveillance cameras up, motion lights, and we're just scared. We're scared for what he's going to do next. Thank you.

Michelle Youngs, Deputy Public Information Officer, Washoe County Sheriff's Office, Washoe County, Nevada:

The Washoe County Sheriff's Office is in support of this bill. What the Henderson and Metro [Las Vegas Metropolitan Police Department] officers have related is a common problem with us, as well, up here in the north. This bill is viewed by my agency as a very valuable tool that we can use early on in these types of cases to be more proactive, and to address these types of problems.

Chairman Anderson:

To make sure that we all understand, this is a statewide issue, not just Henderson; we also have Peeping Toms up here in the north.

We're waiting for the answers to a couple of questions. Those posed by Ms. Gerhardt and some concerns raised by Mr. Horne, as the possibility of using this as a vehicle to address the question of video voyeurism. I would caution the Committee that we may not want to burden this particular bill with that additional discussion, and we'll ask Research to look and see if there is any other bill that we might be able to bring forth that particular discussion into. If this is the only boat we have on the river it may be our only chance to do it. We'll ask for examination, Ms. [Allison] Combs, of the voyeurism questions.

Assemblyman Carpenter:

My question was in regard to where it says, "enclosure," and then it says it's "used as a dwelling." We need to clarify that, I think.

Chairman Anderson:

And the question of "enclosure" and "dwelling," as put forth by the bill drafters. I think those are it. Is there any other question that we need to get addressed, before we can take this up in work session? It's not my intention to put it to the

work session on Monday, although it's a possible candidate, depending on how quickly we have the responses to those.

Assemblyman Carpenter:

I believe that on (c), it says if they don't have a weapon or a camera or whatever, then it's a misdemeanor. What happens if, like the one witness said, they do it more than once, catch you more than once, or they go to jail, and they get out and do it. Is there any chance to enhance that misdemeanor to a felony or something?

Chairman Anderson:

Under, and I'm sure Research and Legal can check on this, NRS 207.030 "Prohibited acts and penalties," we talk about that relative to some other acts, but under 1(a), "offer to agree to engage in or," this one is may be predominantly around prostitution, but we can take a look at that and see what parts of NRS 207.030, so when you have somebody who's constantly reappearing, we may be able to move to an enhanced statute, as we do similarly, in NRS 207.030 for those who "engage in acts of prostitution, or lewd and lascivious conduct."

Chairman Anderson:

Let's turn our attention to Assembly Bill 194.

Assembly Bill 194: Revises provisions governing amount of interest paid by plaintiff in action relating to eminent domain. (BDR 3-850)

Assemblywoman Angle:

I bring to you A.B. 194. I believe, a simple bill that was caused by an error, an unintended consequence of a bill that we ran in 1999 [Seventieth Legislative Session]. I want to introduce to you my intern this session, Mr. Jonathan Reynolds, who is a part-time teacher at Sparks High School. He teaches government and French, and he has asked to learn this process, and so I threw him into the deep water today. He will be presenting A.B. 194. Before I let him do that, I will just make one mention of the fiscal note here. If you look on your fiscal notes on the website, you'll see that there are none, as it pertains to the State, and these ones to the local government are minimal. Now, I'll turn it over to my intern, Jonathan Reynolds.

**Jonathon Reynolds, Intern, Assemblywoman Angle's Office, and Teacher,
Sparks High School, Sparks, Nevada:**

I'm going to briefly present a short PowerPoint demonstration on A.B. 194 ([Exhibit C](#)).

First of all, for A.B. 194 specifically, I'm going to be speaking to the ambiguity that exists in the bill itself.

This bill as stated, "Revises provisions governing amount of interest paid by a plaintiff in action relating to eminent domain." The only line here that's going to be added to this bill is that, "Interest must be compounded annually."

As you can see ([Exhibit C](#)), NRS [*Nevada Revised Statutes*] 37.175, prior to 1999, provided that landowner's eminent domain action would receive interest compounded annually. I'll let you go ahead through that, Mr. Chairman.

Chairman Anderson:

It's best, Mr. Reynolds, to read that aloud so that you get it into the record.

Jonathon Reynolds:

Okay.

Chairman Anderson:

I presume that your presentation will be provided in an electronic format.

Jonathon Reynolds:

Okay. I'll continue on ([Exhibit C](#)). Interest received upon the difference of the amount deposited and the final judgment award. This bill will be revised to state the exact same wording that exists currently in law, however, the ambiguity exists in that it doesn't state whether the interest should be simple, or compounded. Moving on through ([Exhibit C](#)), this simply states the bill itself.

You'll see ([Exhibit C](#)) in 1999, the bill was amended, in fact, and you have on your handout, page 4, it says, "Line 4-29 and Line 4-37 of page 10 [of A.B. 287 of the 70th Legislative Session] ([Exhibit D](#)), where the Committee started to strike through the bill and happened to line out the part where it says, "Interest must be compounded annually."

Continuing through ([Exhibit C](#)), this is what the bill stated. And as you can see it's omitted there, the compounded annually.

Chairman Anderson:

Let me stop you for one moment. What leads you to the belief that it was an unintended consequence that the line be extended to include that sentence?

Jonathon Reynolds:

I'll refer this to Mrs. Angle, if I could, please.

Assemblywoman Angle:

In looking through all the notes on A.B. 287 of the 70th Legislative Session, in our first Committee meeting with the Assembly, and our second Committee meeting with the Assembly, and all of the Senate hearings, we found nothing that even referenced, "compounded annually." All of this was to allow this eminent domain to protect the Nevada landowner, to allow him to have more available tools, and to protect his land interests. There was never any testimony, nor any questions from the Committee, regarding this annually compounded interest, and so it was my assumption, because no one mentioned it, and it was not mentioned by the presenter of the bill to be an important part of it, that it was just an oversight, because it's so much contained within that page. As you can see, everything is lined out, and it just kind of unintentionally got that as well.

Chairman Anderson:

This kind of bothers me. Ms. Angle, it's your contention that unless we talk about it here when we're deleting section statutes of the bill, then we really didn't intend to take that out?

Assemblywoman Angle:

I believe that unless it was brought up that it wasn't an important part of the bill and not important enough to speak about, and because of the prior law, and it's been prior to 1999 as far back as we could go, this "compounded annually" was in there, and if it had been important, I would have thought that we would have at least discussed it.

Chairman Anderson:

I don't necessarily agree, but I understand where you're going.

Jonathon Reynolds:

NRS 37.175, in 1999 when it was amended, it clarifies the time period for the landowner's entitlement to interest. However, it omits the subsection, "Interest must be compounded annually." And this, of course, as I was explaining before, creates an ambiguity as to simple or compound interest. As the Committee may know, through you Mr. Chairman, this is a big difference in numbers.

[Jonathon Reynolds, continued.] First of all, through this amendment it creates barriers to Nevada landowners receiving full and just compensation as their constitutional right. It has been noted that judges are now reluctant to award compound interest, thereby depriving Nevada landowners of this constitutional entitlement.

Here are some cases ([Exhibit C](#)) that you can look at, that I won't speak on, but there will be other testifiers.

The difference between the simple versus the compound interest as you can see ([Exhibit C](#)), here's just a simple example. In an award of \$1 million, over the course of four years in an eminent domain action, a simple interest award on the interest would be \$290,000. However, on a compound interest, it would be \$323,000. The difference, as you see on the bottom ([Exhibit C](#)), is \$33,000. For somebody in an eminent domain action, that's quite significant, as you may note.

Slide 10 ([Exhibit C](#)) is titled, "A Simple Bill that Fixes an Unintended Consequence." I'll just bring you to the bottom portion of it. Added onto this bill, A.B. 194, is: "Interest must be compounded annually," so that the landowner may be compensated justly, according to his constitutional right.

Here are the additions ([Exhibit C](#)). As you can see, by 9, it restores a constitutional right of a Nevada landowner to his just compensation with compounded-interest. Thank you, Mr. Chairman.

Chairman Anderson:

Mr. Reynolds and Ms. Angle, my researcher has indicated to me the Chapter of NRS 37.175, as it existed in 1991, "at a rate equal to prime rate at the largest bank in Nevada as ascertained by the Commission of Financial Institution, in either January or July, as the case may be, as the primary means of determining [the interest rate], prior to 1991. So, we're kind of at a different kind of loggerhead here, but not entirely.

James Leavitt, Attorney, Law Offices of Kermitt L. Waters, Las Vegas, Nevada:
We are here to fully support the amendment to A.B. 194. In the last eight years, I've practiced primarily in the area of eminent domain, and had the opportunity to see the application of the bill as it existed prior to 1999, and as it exists currently.

I've seen the application of that bill in cases which have been litigated and tried, and wherein the judges have been faced with the task of determining how much

the landowner should be paid in interest. [Read from prepared testimony [Exhibit E.](#)]

[James Leavitt, continued.] Prior to 1999, it was always presumed that a landowner would be paid compound interest. It was written into the statute, and that was the existence of the law also, as of that time.

The Nevada Supreme Court has defined "just compensation" as that amount of compensation which is real, substantial, full, and ample, and that amount of compensation which would put the landowner back in the same position pecuniarily, or monetarily, as he was prior to the taking.

Since a landowner, if he or she were paid the just compensation award in a timely fashion, could have invested that money in an instrument which would have paid the landowner compound interest. The courts have always held that those landowners should be paid compound interest.

Because the bill was changed in 1999 however, it has been a very, very difficult task to obtain that compound interest for landowners. Many judges who read the bill in 1999 and the change that was made say, "Well, the Legislature must have intended to erase that from the landowners just compensation award," and we don't think that was the intention of the Legislature back in 1999.

When the bill referred over to the other sections of the *Nevada Revised Statutes*, it's our belief that it may have been intended that compound interest would have been paid as a result of those cases also. Now, we have presented this issue on numerous occasions to district court judges in post-trial motions, and one of our witnesses who we always bring into those cases, his name is Terrence Clauretie, he's a Professor of Economics at UNLV [University of Las Vegas, Nevada].

He makes a presentation, and he puts in his affidavit evidence showing that a landowner cannot receive just compensation. He cannot be put back in the same position, monetarily, as he was prior to the taking, if he is simply paid simple interest and not compound interest. Once again, that refers back to my statement that if the landowner had been paid that money in a timely fashion, as provided in the statutes and as provided in the case law, then

he could have invested that money in an instrument which would have paid that landowner compound interest.

[James Leavitt, continued.] All we're asking for in this bill, which we fully support and on which we fully support Assemblywoman Angle's position, is that the landowner be put back in the same position monetarily as he was prior to the taking, as is stated in the case law. And to follow the federal law, which clearly states that this is the amount of interest which should be paid.

Once again, and I'll be very brief here, and I'll conclude here, Chairman Anderson, is that the district courts are looking to the change that was made in 1999, and some of those district courts are now allowing compound interest.

The case that was presented to you earlier today in the PowerPoint presentation ([Exhibit C](#)), *County of Clark v. Lynda C. Carson, et al.*, (2001), is actually one which we litigated, and we had the post-trial motion, and we presented this issue to the district court judge. We presented the case law to the district court judge, and we also presented the affidavit and the testimony of Terrence Clauretie ([Exhibit E](#)), but because of that change that was made in 1999, the district court judge would not award compound interest. We think that this ambiguity has caused a situation which has reduced the landowner's just compensation rights, and we strongly support the proposed amendment.

Brian Padgett, Attorney, Law Offices of Kermitt L. Waters, Las Vegas Nevada:

I, too, fully support Assemblywoman Angle's bill, and we feel that compound interest is needed in order to place the landowner back in the position he or she would have been in prior to a taking. If the landowner had that full compensation at the time of the taking, the landowner could have taken those monies and put them into a simple investment vehicle, such as even a savings account that would draw compound interest. And now, because of the change in 1999, whereas it doesn't specifically deny compound interest, but because of the omission of the words "compound interest" from the previous recitation of the statute, certain district court judges are a little shy about granting compound interest, because it is unclear.

We strongly support Assemblywoman Angle's bill here. We feel it's just and appropriate that the Legislature clarify this position, and support the Constitutional rights of landowner's to just compensation, and in fact amend the current statute to include that landowners shall receive this interest compounded, rather than in a simple interest format, as the testimony of Mr. Reynolds showed.

[Brian Padgett, continued.] In any event, when a landowner gets a just-compensation award, you can see the difference between compound interest and simple interest. It is significant, and therefore we fully support Ms. Angle's bill.

Chairman Anderson:

Mr. Padgett restates the statement made by Mr. Leavitt. We appreciate the restatement and emphasis added by you. Is there any additional information that we've not heard that you need to tell us, Mr. Padgett? I guess I should have said that in the very beginning. This is information that has not been given to us.

Brian Padgett:

I have nothing further at this time, Mr. Chairman.

Chairman Anderson:

Ms. Fitzsimmons, you were here in the first go by, and the second go by, and have probably more in-depth knowledge of those times.

Laura Fitzsimmons, Attorney, Law Offices of Laura Fitzsimmons, Las Vegas, Nevada:

You are indeed correct. I do have some personal knowledge about this issue. I began in the mid-1990s representing landowners in condemnation cases, and started realizing that in the early or mid-1990s there had been a couple of changes to law, and I think your researcher had noticed this, that basically the government entities that come in to the Legislature and had gotten some changes to some laws, including the prejudgment interest law.

Landowners in condemnation cases don't anticipate that sometime the government is going to come in and take their property. They simply own property and because the government needs that property for a public use, they end up in litigation against the government. Because of that, really prior to A.B. 287 of the 70th Legislative Session, the landowner's position, in my mind, had not been adequately articulated before the Legislature. [Former Assemblywoman] Gene Segerblom submitted a bill that was joined by many members of the Assembly that concerned a number of provisions. That original bill, as you might recall, Mr. Chairman, had maybe ten changes, proposed changes to state condemnation law. Basically, to bring the state of Nevada property owner's rights in accordance with the property owner's rights of all states surrounding Nevada.

I moved up here, in 1999, and found myself on the other side. The bill was held and delayed for a number of reasons, and I will absolutely agree with

Assemblywoman Angle that the issue of compound versus not compounded was, to my knowledge, never discussed in hearings, nor to my knowledge was ever discussed in the negotiations, at least that I participated in behind the scenes. It simply wasn't the issue.

[Laura Fitzsimmons, continued.] The reason that the prejudgment interests were being changed was because NDOT [Nevada Department of Transportation] had gotten a change in previous sessions which forced landowners, in every case in which the government had deposited low-ball amounts, after they got a verdict to have to go in and do a prove-up, a lengthy and expensive prove-up, to judges.

That was the focus, to make it Prime [interest rate] plus 2. I did not, I was a criminal practitioner, criminal defense practitioner, understand at the time that the [NRS] Chapter 17 statutes were not compounded. It didn't cross my mind.

All I'm saying is, absolutely, in the last days of that session, after that bill had been held, and so the other provisions, business losses and various other things really contested by the government entities, the bill went through as you see it went through. Two things happened. This change, and then the trial date of value changed. I will tell you, that's my absolute best recollection of the history of this bill.

I will tell you that I talked to Ben [Graham], who is here this morning. He indicated that there may be a concern on behalf of Clark County that, really, how can you justify this bill, because in other civil litigations—let's say somebody runs me over in a crosswalk, and I get a judgment, and I get interest on that judgment, I don't get that interest compounded. Well, my response to that would be: condemnation cases are the only kinds of civil litigation that were spoken to by the framers of our *Constitution*, the *U.S. Constitution* and the *Nevada Constitution*. They are unique cases, because from the very beginning, when the government intends to take property and knows it's going to file a condemnation action, liability is given. Most civil proceedings, you're deciding who is to blame, and then how much they have to pay.

In condemnation cases, the decision, it's not a blame issue, it's an operation of the *Constitution*. But that liability, it's absolutely given, in all of those cases that something will be paid by the government who initiates this action. The only issue is how much.

You may have questions, I anticipate, Mr. Chairman, for me about my recollection of the history of the bill, and if they differ from yours, I'd certainly enjoy an opportunity to discuss that.

Chairman Anderson:

I would remind the Committee that the 1999 Session was one of those 120-day sessions of which, and of course this Committee had taken its action in a due timely fashion by March, and it went to Ways and Means where they held it, as all good things are held in Ways and Means until the very, very last second because of the potential economic impact upon the State. There were concerns about that, and Ms. Fitzsimmons appeared in front of Ways and Means and clarified the issue for the Body.

I do agree that we did not talk about it, either here, and I presume because it was a money question, it would have been talked about next door, I can't attest to that, but it would appear in reviewing the record that it was not a point of discussion. However, that doesn't necessarily mean that the bill drafter made an error in striking all the way through where they struck through. It must be a reflection of a different set of questions.

Laura Fitzsimmons:

Again, I don't do this. Actually, there's a reason you haven't seen me since 1999. It was because this experience was something that I felt out of my league from the beginning on. I didn't really understand the process, and I'm not sure I do. And I'm not sure if what I'm about to say is appropriate. I'm just not, I'm sorry; it's a special art to know what's appropriate. All I will say is, basically what happened, and you are correct that this went through you and it was held by the Chair of Assembly Ways and Means. We were up against a horrible time limit and we got together and tried to get something that would get through, and so I remember having faxed to me something with cross-outs from the government entities. I don't know, I mean I probably have that somewhere in Las Vegas, I didn't know it would come up, but I will tell you that I never had a conversation with any of the people opposing this bill, at that time, about whether it would be compound or not compound. There were a lot of very substantial issues that were in real dispute between us.

Madelyn Shipman, J. D., Legislative Advocate, representing Nevada District Attorneys Association:

I want to raise a policy issue, other than the one that Ms. Fitzsimmons aptly put forward to you, about the consistency issue. The other policy question and issue that I think you should be addressing, is inverse condemnation, because as you know, this Committee—I think it was like maybe two sessions ago—basically said, "No we're not going to change the statute of limitations for inverse," and right now that's a 15-year statute.

The typical eminent domain case under State law is, the government is required at least to make the very strong effort to get it to trial within two years,

essentially, there's fault issues if you don't. The money issue on a traditional eminent domain case, compounded or simple, is really not that big of a deal.

[Madelyn Shipman, continued.] Where it comes into play, and where I think the policy question comes in is, if you had a regulatory kind of taking, which is more popular these days, going back 13 years, but the filing only took place two years ago, are you going to be liable for 15 years, or 13 years of compounded interest, or 2?

I guess there is another issue, I think, that needs to be addressed, as it relates to whether or not compound interest will apply, or from what date.

Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office; and representing the Nevada District Attorneys Association:

This is primarily to give a little bit of notice of what we've been asked to do, so that if there are other county attorneys in the Civil Division, or in NDOT [Nevada Department of Transportation], they need to get up here. This will probably be the last you will hear from Ms. Shipman and I on this issue.

Chairman Anderson:

I doubt it, Mr. Graham. I have a feeling that we'll be hearing about eminent domain, and that you'll have a responsibility, and I know Ms. Shipman, with her expertise in this area, will more than likely be representing part of the questions.

Is there anybody else who has not yet spoken relative to the questions here on A.B. 194, who wants to get themselves on the record on the questions in front of us?

Bring it back to Committee. Let me take care of the question. We have a Subcommittee dealing with eminent domain questions currently and those questions raised by Mr. Horne. The choices are: we can pass the bill, of course, right this second, if we think that it's in the clear; we can put it back on Bernie's board to sit and mellow; or we can assign it to the Subcommittee. I was of the opinion that it might be a good idea to put it into the Subcommittee. Not to combine them into a single bill, but rather to make sure that the question is more fully discussed in the Subcommittee. Subcommittee Chairman Mr. Conklin, and Mr. Carpenter and Mr. Horne, would then take up this issue and make a recommendation on both bills, when they came back. Pleasure of the Committee? Mr. Conklin, since it's your Subcommittee?

Assemblyman Conklin:

I think I'd like to see this in Subcommittee, if for no other reason to make sure that both bills ... I think in some way they may even be connected; what we're

trying to do here is help the homeowner out. I just want to maybe flush out the issues together. That's what I'd like to see.

Chairman Anderson:

Ms. Angle, it's your bill.

Assemblywoman Angle:

I really don't see the correlation between these. This is a very simple bill and I feel that the other bill has some things that we probably do need to discuss, but this one is so simple. I just don't see why it needs to be bogged down in that discussion.

Chairman Anderson:

I'm missing a couple of people today, and I wasn't planning on taking a vote on bills without Ms. Buckley being here, so it would be hanging on my board then. I'd rather see it in a work session, but that's me.

Assemblywoman Allen:

If the Chair is not willing to entertain a motion, then that's fine, it's your discretion.

Chairman Anderson:

I'm not looking for one bill to come out with all the weight on it. There are a couple of issues here that I want to make sure, relative to bill drafting, what took place there, and why. Until I have clarity of that issue, I'm not going to move the bill. The choices would be, as far as I'm concerned, put it on the board, or I can put it into the Subcommittee.

Assemblyman Horne:

I had some of those same concerns, and particularly, I think that if everything presented to us today was factual, and let's say this issue was not even delved into prior, and the differences between the compound interest and other interest seems to be kind of large. It would seem like something we should look in and see what really happened. I think there's more likelihood of that happening in a Subcommittee than on the board, perhaps.

Chairman Anderson:

Let us then assign Assembly Bill 194, Mr. Conklin, to your Subcommittee dealing with the eminent domain issue, of which has a meeting date of March 22, at 1:00 p.m. in this room [3138]. Hopefully, we'll have part of the questions. It just means that it won't be on the Monday work session.

[Chairman Anderson, continued.] We'd like the answers to the questions on A.B. 194. Mr. Conklin, it might be possible to solve this issue on A.B. 194 at the very first go, and maybe not. It shouldn't be the highest priority, because I know you have an extensive hearing that you need to hold on the other bill.

Chairman Anderson:

Let us open the hearing on Assembly Bill 118.

Assembly Bill 118: Revises provisions governing smoking of tobacco in certain places. (BDR 15-807)

Chairman Anderson:

Thank you for allowing us to wait until after the initiative petitions were heard, before we took up this particular bill. The reason I say that is because recognizing this may be one of the few bills that we have dealing with smoking issues, which may become a vehicle for other pieces of legislation.

Assemblywoman Kathy McClain, Assembly District No. 15, Clark County (part):

I am the Chairman of the Taskforce for the Fund for a Healthy Nevada, which distributes tobacco funds to grantees.

As you know, committees have a deadline for putting in BDRs [bill draft requests]. After the deadline of September 1, last year, our Committee heard several issues for either supporting legislation or encouraging drafting of legislation. Of course, we were too late for the deadline. One of the issues that we talked about was Dr. Hardy's [Assemblyman Joe Hardy] bill from last session, Assembly Bill 14 of the 20th Special Legislative Session. It was introduced in the Twentieth Special Legislative Session, but we basically ran out of time to get it approved.

I, as Chairman, since we had missed the Committee deadline for BDRs, said that I would carry this bill in my name. Dr. Hardy is cosponsoring it, and has the full support of the Taskforce for the Fund for a Healthy Nevada.

With that, I will let Dr. Hardy explain the language.

Assemblyman Joe Hardy, Assembly District No. 20, Clark County (part):

Last Session [Seventy-first Legislative Session], I was approached by involved lobbyists, who asked me to bring amendment to any tobacco bill. We ended up amending a precluding smoking from daycare facilities that cared for more than 4 children, and in video arcades, and very quickly had the support of the

tobacco industry, as well as the State Employees, Retired State Employees and everyone of what I would call the "healthy associations."

[Assemblyman Hardy, continued.] We had the bill and it was heard in Ways and Means because there was a fiscal note attached to the original bill, although not the amendment. At the end of what I fondly call the "extra-special session", there was a powerful presentation made on the Floor of the Assembly, by the Chair of this Committee, and this bill passed in the Assembly 41-1. At about 10:30 p.m. that same night, the Senate chose to vote 10-10 on the bill that required a two-thirds majority. So, the amendment that was attached to the bill died as well.

The Taskforce for the Fund for a Healthy Nevada saw a nexus of the relative nature of improving the health of children, and decreasing smoking in certain places, and so we bring this back as its own separate bill that would preclude smoking from video arcades and childcare facilities for more than 4 children. The rationale for the number 4 was, the 4 children can be cared for in a personal residence, and it was felt unfair to, again by the Chair of this Committee's suggestion, limit a personal residence and the people who live therein from practicing whatever they do in tobacco habits.

I would commend the Chairwoman for the Taskforce for the Fund for a Healthy Nevada, for her willingness to carry this bill, and am very supportive of this in its passage. I'll open for any questions.

Assemblywoman McClain:

Because this is a simple bill, we want to keep it simple for two reasons. The Taskforce for the Fund for a Healthy Nevada has specifically endorsed this particular bill. I cannot support a lot of amendments, and neither can the Taskforce, that we have not talked about. I would encourage anybody who wants to amend this radically, to not.

Chairman Anderson:

I appreciate that, Ms. McClain, however, this may be the only boat on the river, and if it's the only boat on the river and there is strong feeling about adding additional things. It is not the bill that belongs to that group anymore, it is now the bill that belongs to the Body.

Assemblywoman McClain:

I understand, but I just highly encourage you that maybe this boat might sink.

Chairman Anderson:

I appreciate that, Ms. McClain. I have scars on this particular issue and have for many years. I still haven't gotten my way on the way I like it to fit, or else some of these would have already been done, as you well know.

Assemblyman Mabey:

Just a procedural question. Let's say, and I guess this is for Legal or you, Mr. Chairman, if this passes the way it is, and then the initiative, either one of those passes, will that then make this bill moot?

Chairman Anderson:

I'm not Legal, so I'm not entitled to respond. However, I'm of the opinion, depending upon whether Initiative Petition 1 or Initiative Petition 2 passes, they would have different effects upon this particular section of the law. It would appear that if Initiative Petition 1 were to pass, it does somewhat mirror this in a couple of instances. Initiative Petition 2 has a somewhat different question. I don't think that it would affect this particular law, but I would point out that we are precluded from taking up this issue as a Legislative Body, and a future Legislative Body would be precluded from taking up this section of the law for three sessions following the passage of initiative petitions.

The advantage here would be that these would be in place, assuming that they made it to the Senate and were signed by the Governor, that they would become effective immediately, which is what our desire was, if I'm to understand correctly what the Assembly's desire was last session and unfortunately in the special [session] this did not happen. Does that help, Doctor?

Assemblyman Mabey:

If Initiative Petition 2 passes, then, if this passed, it would go into effect immediately. But, in two years? Is that two times on the ballot a constitutional amendment, or just one, Initiative Petition 2?

Chairman Anderson:

It's an initiative petition, therefore, it would require only one time on the ballot.

Assemblyman Mabey:

So, if Initiative Petition 2 passed, and if this bill passed, would that mean this bill would go into effect but then be cancelled?

Chairman Anderson:

I don't believe that's true, because it would be existing law. I'd have to look on a line by line basis at Initiative Petition 2, relative to its treatment of arcades.

I'm of the opinion that it would not create a conflict, but we'll have to take a look. Both Initiative Petition 1 and Initiative Petition 2 do indeed prohibit smoking in arcades, so we wouldn't have that problem.

[Chairman Anderson, continued.] The difference being, of course, that Initiative Petition 1 extends the ability of the health care department to do, or the county commission to do additional things. They both somewhat change the definition of child care facilities, and so child care facilities would definitely be affected by this, because both Initiative Petition 1 and Initiative Petition 2 have a narrower definition relative to the 5 children, for example, which is what we were concerned about. If you'll recall, in smaller communities of the state where oftentimes home dwellings are utilized, and somebody is being compensated for that, and yet they're not taking care of quite a few children.

Assemblywoman Ohrenschall:

I simply want to make my statement that I am on the Board of Directors of a company that deals in tobacco products, and so to avoid any possibility of looking bad, I simply will withdraw and not vote, or otherwise participate in this particular bill.

Chairman Anderson:

I also note that this particular bill, lines 23 and 24, removes the authority, for a person in control of a child care facility, to designate a smoking area within their facility, and I believe that's similar to what we had looked for in the last session.

Buffy Martin, Governmental Relations Director, American Cancer Society; and Legislative Advocate, representing American Lung Association, American Heart Association, and Nevada Tobacco Prevention Coalition:

[Spoke from prepared testimony [Exhibit F](#)]

We are in support of the intent of Assembly Bill 118 to create measures to protect Nevada's children from the dangers of secondhand smoke, in day care centers and video arcades.

As you may be aware, secondhand smoke exposure is one of the leading causes of asthma in children, and Nevada, unfortunately, ranks number one in childhood asthma cases.

While we do support Assembly Bill 118, we also believe that it does not go far enough towards protecting our children. However, we are grateful that this Body is making efforts towards public health. So, on behalf of the American Lung Association, the

American Cancer Society, the American Heart Association, and the Nevada Tobacco Prevention Coalition, we ask you to vote to support Assembly Bill 118.

Chairman Anderson:

Ms. Martin, did you say you have some amendments for this?

Buffy Martin:

No, Mr. Chair, we have no amendments.

Chairman Anderson:

Questions for Ms. Martin, from the American Cancer Society, who has been a long time waiting for this particular piece of legislation to come forward?

Is there anybody else wishing to speak in support of Assembly Bill 118?

Jim Avance, Legislative Advocate, representing Nevada Retail Gaming Association:

I would just indicate to you, Sir, as the bill is written, my group is in support of it, as long as there are not amendments. Having said that, I would tell you that I would actively support and push it in the Senate, if it leaves this Body the way it came in.

Chairman Anderson:

Your Association also feels that strongly about this particular set of amendments?

Jim Avance:

That is correct, Mr. Chairman, we supported it in the special session.

Peter Kruger, Legislative Advocate, representing Nevada Petroleum Marketers and Convenience Store Association, Reno, Nevada:

We are in support of the bill as written, and we'll also work to see that it gets passed in its original form.

Tony Sanchez, Legislative Advocate, representing Herbst Gaming, Inc., Las Vegas, Nevada:

We too, are in support of A.B. 118 in its current form, and echo the comments of Mr. Avance and Mr. Kruger.

Sam McMullen, Legislative Advocate, representing Nevada Restaurant Association; Retail Association of Nevada; and Las Vegas Chamber of Commerce:

Put the support for this bill, on behalf of the Nevada Restaurant Association, Retail Association of Nevada, and the Las Vegas Chamber of Commerce on the record and I would also work to see that it gets through this year.

Chairman Anderson:

And I understand then that is a pledge from you to help the bill pass, if it's not amended on the other side?

Sam McMullen:

Absolutely.

Chairman Anderson:

Mr. Sanchez, is that also a pledge and commitment from you too?

Tony Sanchez:

It is absolutely a pledge, Mr. Chairman.

Chairman Anderson:

Mr. Kruger, you're going to be helping with this bill also?

Peter Kruger:

Yes, Mr. Chairman.

Chairman Anderson:

I'm missing a couple of people who I know want to vote on this particular issue. It will be coming up on a work session on Monday. Some people had indicated that they had some concerns relative to the bill, in that they'd like to see it go a little bit further.

My concern remains that this is the only bill that we have. There is another bill dealing in the smoking area that the Committee has requested for drafting. However, it's primarily aimed at the use of the dollars, and the protective funds of the State. Feeling of the Committee?

Assemblyman Mabey:

I'm comfortable the way the bill is written.

Chairman Anderson:

You're not of the opinion that there's something else you wanted to put in?

Assemblyman Mabey:

I've thought about it. I still have an opportunity on the Floor. My concern is if we added more to it, it may not pass the Senate, and I'm not sure, if we added more, what would happen if one of the initiative petitions passed.

Assemblyman Holcomb:

I second.

Chairman Anderson:

What is it that you're seconding?

Assemblyman Holcomb:

That we vote on it.

Chairman Anderson:

You're prepared to vote?

Assemblyman Holcomb:

Yes.

Chairman Anderson:

I don't have Ms. Buckley and Mr. Ocegüera. Ms. Buckley has strong feelings about this particular issue and has already indicated to me her strong feelings, so I think we can do it on Monday without out any trouble. When we have the full Committee on Monday, we'll see what we can do. [Closed the hearing on A. B. 118.]

[Adjourned meeting at 10:18 a.m.]

RESPECTFULLY SUBMITTED:

Jane Oliver
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Judiciary</u>			
Date: <u>March 17, 2005</u>		Time of Meeting: <u>8:14 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
190	B	Stan Olsen, Executive Director, Las Vegas Metropolitan Police Department and Nevada Sheriff's and Chief's Association	Testimony in support of <u>A.B. 190</u>
194	C	Jonathan Reynolds, Intern, Assemblywoman Angle's Office and Teacher, Sparks High School, Sparks, Nevada	PowerPoint presentation on <u>A.B. 194</u>
194	D	Jonathan Reynolds, Intern, Assemblywoman Angle's Office and Teacher, Sparks High School, Sparks, Nevada	Copy of a portion of <u>A.B. 287 of the Seventieth Legislative Session</u> text
194	E	James Leavitt, Attorney, Law Offices of Kermitt L. Waters, Las Vegas, Nevada	Testimony in support of <u>A.B. 194</u>
118	F	Buffy Martin, Governmental Relations Director, American Cancer Society; and Legislative Advocate, representing American Lung Association, American Heart Association, and Nevada Tobacco Prevention Coalition	Testimony in support of <u>A.B. 118</u>