

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

**Seventy-Third Session
February 11, 2005**

The Committee on Judiciary was called to order at 8:12 a.m., on Friday, February 11, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, 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 Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Mr. John Ocegüera (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Rene' Yeckley, Committee Counsel

Katie Miles, Committee Policy Analyst
Carole Snider, Committee Attaché

OTHERS PRESENT:

Nancy A. Becker, Chief Justice, Supreme Court of Nevada
Ron Titus, Director and State Court Administrator of the Administrative
Office of the Courts, Supreme Court of Nevada
Dennis K. Neilander, Chairman, State Gaming Control Board, State of
Nevada

Chairman Anderson:

[Meeting called to order and roll called.] The Honorable Nancy Becker, Chief Justice of the Supreme Court, is here with us today to provide an overview of the court system. With her is Ron Titus, the State Court Administrator and Director of the Administrative Office of the Court.

Nancy Becker, Chief Justice, Supreme Court of Nevada:

We handed out several reports to the Committee today, which includes the Nevada Supreme Court Annual Report ([Exhibit B](#)), and the report on the funding of the specialty courts, which would be the mental health courts, the drug courts, and the other programs that the courts use in an attempt to change people's lives and avoid recidivism ([Exhibit C](#)). Also, the report that shows you that in addition to the hard work of processing cases, how many miles our rural judges have to travel so that people have a better appreciation of the scope and size of the state, and the task that it is to provide justice to people, given the long distances that people have to travel ([Exhibit D](#)). Those are all available on the Supreme Court's website, which is <www.nvsupremecourt.us>.

Mr. Chairman, I would like to thank you very much for inviting us here today to provide a brief overview of the judicial system ([Exhibit E](#)). Nevada's judiciary is one of the leaders in developing innovative ways to process cases. That is because Nevada is also one of the leaders regarding the number of cases per judge in the country. We have the highest volume of any trial courts and supreme courts in the country. Many of our limited jurisdiction courts, which are our municipal and justice courts, also have caseloads that are much higher than those that you will see in other states.

Despite that, we have been leaders in a number of areas. One of those areas is in developing specialty courts. Jack Layman of the Eighth Judicial District Court and Judge Peter Breen of the Second Judicial District Court laid the foundations

for drug courts and mental health courts in the state of Nevada that have received national recognition. Currently, Judge Jan Berry of the Second Judicial District Court is looking at exploring a homeless court program in connection with work that has been done in San Diego and in cooperation with the American Bar Association.

[Chief Justice Becker, continued.] We have also been leaders in terms of developing case processing tasks. The number of cases, particularly the complex cases in the judiciary, is growing. That includes medical malpractice cases, construction defect cases, water rights cases, and cases that take three to six months to try. Because of that, we use up judicial resources, obviously at a greater pace than a case that takes two days to try. To combat that, we have looked at a different number of methods of case managing to try as much as possible to process those cases in a timely fashion. One of those would be the Construction Defect Program that is currently in effect run by Judges [Michael] Cherry, [Nancy] Saitta and [Allan] Earl in the Eighth Judicial Court, and the Supreme Court's own Fast Track Settlement Programs.

Despite all of that, it has not been enough. The number of cases being filed, particularly the cases that involve gross misdemeanors, felonies, and civil cases over \$10,000, are growing at a rate such that the total caseload of the courts, in some cases, is actually growing faster than the population rate. There have been huge increases.

That is why you will hear during this session discussion of new judges for the Eighth Judicial District Court in combination with an expansion of the Supreme Court's Senior Justice Judge Program. It is the most cost-effective method to provide resources to prevent cases from being delayed. By being delayed, I mean the American Bar Association recommends a certain percentage of the court's caseload should be completed within one year or 18 months, depending upon the type of case we are talking about. In some of our courts in Nevada, particularly the Eighth and Second Judicial Districts, we are nowhere near that. We are going to creep into the three-year mark because we just don't have enough judicial resources, enough judges, and enough people to process the cases in that fashion.

The rural courts, as you heard the other day in the rural court presentation given to you by Senator McGinness, have unique problems. Among them is the lack of revenue funding to support many of their functions, such as the specialty courts. For that reason, when the Legislature passed some funding mechanisms last session, they directed a \$10 administrative assessment on misdemeanors and traffic citations go into a special court fund. Mr. Titus will give you more of an update on that later. This assessment has been divided amongst the various

courts, including the rural courts and the limited jurisdiction courts, in order to provide those kinds of outreach programs to our citizens outside of the more populous areas in the state.

[Chief Justice Becker, continued.] You also heard the need to create a Rural Court Coordinator in the Administrative Office of the Courts. That is part of the court's agenda and the funding of a courthouse in Ely. Those two matters are part of our Senior Judge Program and the Governor's Executive Review that was presented by Perry Comeaux during the first days of the budget hearings. Hopefully, that kind of support will be here from the Legislature as a whole.

Finally, we have begun developing comprehensive information on how the courts are funded. Thanks to Justice Agosti, who began this process when she was Chief two years ago, and the Court Funding Commission on which Chairman Anderson so ably served, we will have in two to three weeks a very comprehensive report for you on exactly how the courts are funded in this state. That is, what are the costs for running the court system in Nevada? How is that paid for?

So with that initial overview, I would like to thank both the Legislature and the Governor for the cooperative effort that we have had in all three branches of the government over the past years in order to try and combat some of these growth issues and provide better services to our citizens in the court system.

In terms of an overview of the Judicial Branch of the government, the Supreme Court of the State of Nevada is the highest court in the state. We are an appellate court. Our job is to look at the records of what the trial courts have done, particularly the general jurisdiction trial courts. We determine whether or not there was an error made and if there was an error, does it warrant a new trial or reversal of some of the proceedings for the case? If not, the case is affirmed. We do meet in three-judge panels. The Supreme Court has one of the highest per-judge caseloads in the nation. Some of the charts we have passed out will show that. Page two of the charts ([Exhibit E](#)) simply gives you the organization.

The district courts are the courts of general jurisdiction. They are your general trial courts. You can see that they handle all felonies and gross misdemeanor trials and also all matters over \$10,000. They are the ones conducting the jury trials that people see over the television. They also are the appellate court for the limited jurisdiction courts, the justice courts, and the municipal courts. The municipal courts hear all misdemeanors, which are cases for which you can receive \$1,000 fine or six months in jail that are committed in incorporated

cities. The justice courts hear those misdemeanors for the unincorporated areas in the counties, any civil matters up to \$10,000, all landlord/tenant and small claims proceedings, and they issue temporary protective orders as well as conducting all the preliminary hearings.

[Chief Justice Becker, continued.] We also have responsibility over the functions beyond that of the administration of the courts. That is trying to coordinate the judicial system. Each of the lower courts—the district courts, the justice courts and the municipal courts—receive significant funding or all of their funding from the local jurisdiction, either the counties or the cities. The only thing the state funds is the operations of the Supreme Court and the salaries of the district court judges. So it is a matter of having to coordinate between the local needs, the state needs, and the judiciary as a whole. We do that through a lot of communication. We also have to work with elected county clerks because they are the ones who are designated, in most instances, to be the court clerks for the district courts. We work with various law libraries and other groups through the state.

The next slide ([Exhibit E](#)), which reviews the Supreme Court, simply gives you a little bit of information about the court itself and how we run. You will note that our funding is approximately 50 percent general fund and 50 percent from administrative assessments. For those individuals who are new to the Legislature, administrative assessments are set by the Legislature. They are designated to a specific purpose where a fine goes into the General Fund revenues, either the city, county, or state depending upon where the fine comes from. Administrative assessments, however, are set amounts per case and the schedule is set by the Legislature. They are dedicated for specific purposes like the specialty courts, technology in the court system, and courthouse construction.

Chairman Anderson will remember the Supreme Court's case inventory peaked at about 2,500 cases a number of years ago. That is when the Supreme Court experienced an approximately 500-case increase in one year on filings. Since then, while working through the panel system, which the Legislature enabled us to do, we have been able to decrease that by 1,000 cases. Finally, our filing rate has remained flat, but we are just waiting for the other shoe to drop, because that growth at the general jurisdiction trial court level means that our caseload is going to boom.

The next chart (page 5 of [Exhibit E](#)) simply shows you a comparison of the number of cases per justice. In that chart are all of the appellate judges for a particular state. As you can see, Nevada tops the list of these states that have

similar populations to Nevada and have similar caseloads. At 246 cases per justice, Oregon comes the closest at 200. The rest are all in the 80 range.

[Chief Justice Becker, continued.] Page 6 ([Exhibit E](#)) just gives you a little more detailed information on our statistics for the court. Page 7 ([Exhibit E](#)) is just an interesting chart that we developed so that you can understand that we don't decide 1,900 cases per year in the clerk's office, as we have 6,000 other tasks. Many courts in the nation have taken an approach if your paperwork isn't correct, you dismiss the appeal. That's it. We don't give you second chances. That is the philosophy of many courts in the nation. That is not the philosophy of this court. If someone's paperwork isn't correct, we send out an order to show cause to explain what the problem is and we ask them to correct it. Sometimes we have to send out two or three depending whether or not we are dealing with a person who is representing himself, as he may not understand the system well. Or perhaps this is an office of an attorney and this is his first appeal. So it is a kind of educational process. We answer phone calls through the clerk's office on what is happening with a case and how does the court system work. That is in addition to the 1,900 orders or opinions being processed or thousands of these other tasks.

The Supreme Court Settlement Program, as you can see, still maintains settling 50 percent of its civil cases. Every appeal, with the exception of parental termination, goes into civil appeal and the settlement conference. As you can see, a good percentage of those are settled and the rest are decided by the Court. Without a program like that, the disposition rates, with the time it takes to dispose of the appeal, would be greatly increased.

The next page ([Exhibit E](#)) is just more of a written explanation about the tasking and the thousands of tasks that we do. We have included this year, so that you will have a better understanding of the amount of rule making that the court engages in, are on pages 10 and 11 ([Exhibit E](#)). I won't go into depth about that, but many of these rules are extremely important such as rules of professional conduct for attorneys and rules of civil procedure. They are time-consuming when we amend them and they take up a great deal of staff and justice time. They are necessary as the practice of the courts changes as conditions change in the country. We are not still doing the same things as we did in the 1800s.

The next two sheets ([Exhibit E](#)) tell you more about the district courts and the jurisdiction of the district courts, the justice, and the municipal courts. We have 60 judges statewide at the moment handling the district court matters. We have 64 justices of the peace and municipal court judges. We won't go into detail regarding this, as most of it has already been covered.

[Chief Justice Becker, continued.] Our general statistics are part of the annual case report and we took that out. We have a chart a little bit later that will show how growth is going. The only thing that hasn't grown is traffic citations. The reason for that, based upon our interview with law enforcement agencies and the courts, is a very simple reason. Post-9/11 [September 11, 2001], officers have been shifted from traffic enforcement to security. That is obviously a very appropriate thing but it has resulted in a decreasing trend in citations. That also means there is decreased funding for the specialty courts than we originally projected. Because the traffic cases are the highest-volume cases with assessments attached, and even though you raise the amount of assessment by \$10, the general revenue fund is where it needs to be. The trend is we won't have as many cases, and therefore we won't have as much money as we originally predicted because the traffic cases are down by as much as 5 percent statewide.

The next two charts illustrate (page 15 of [Exhibit E](#)) in the Second and the Eighth Judicial District Courts, which is Washoe and Clark, the average percentage increase in total caseloads over the last four years. If you look at that line, it has skyrocketed. For those who can't see it, that's a 45-degree slope. That is a very slippery slope. That is what is happening in the Second Judicial District Court, although the Second's average percentage growth has been greater. Their caseload per judge was not as great as the Eighth Judicial District Court's originally. So they have been through their creative process, in the leadership of Judge [James] Hardesty, now Justice Hardesty, and now Judge [Jerome] Polaha, and have been able to work within that. They are also reaching the breaking point, so I would think they would be asking for additional judges in Washoe next year. Clark has already reached the breaking point and is asking for them now.

The next two charts ([Exhibit E](#)) show you the total responsibilities of the Administrative Office of the Courts. I won't go through them all as it is quite a list. There was a time, about 10 years ago, when the Administrative Office of the Courts was really just the data processing and payroll department of the Supreme Court. The Legislature provided funding through administrative assessments so that we could expand it and actually begin the process of coordinating as courts together so we could work on joint projects. We have done a number of marvelous things. We have created multiple jurisdiction, data entry, and computer tracking files which include the prosecutor's offices, the police, and the court systems. So when people enter data, it is automatically real-time updated into the other systems. This eliminated some of the duplicate data entry that we used to see. It is coordinated from a number of counties. That particular program, I believe, is Douglas, Carson, Storey, and Lyon Counties. Those were things that were just unheard of 10 years ago. We have

all sorts of those special projects functioning throughout the state. Those projects and the major responsibilities are listed on page 17 ([Exhibit E](#)).

[Chief Justice Becker, continued.] This is the end of my part of the presentation for the moment. I will let Ron Titus tell you a little more about the Administrative Office of the Courts and what they will be doing. Then I will give you a brief overview of the Judicial Council.

Chairman Anderson:

Mr. Carpenter and I were here in 1995. Among the things we were frustrated with, as members as the legislative side of this discussion, was particular information about the caseload that was more substantial rather than anecdotal, which seemed to be the way information was coming.

The Administrative Office of the Courts made several very direct promises to us as legislators that they would have a more efficient reporting scheme in terms of the nature of the Court and what they were doing with particular types of cases. I was concerned about drug courts, since that was one of my favorite of juveniles and the different topics. Since then we have seen the question day-to-day operations. I, in part, feel the Court has made a quantum leap forward and has fulfilled that promise that was made in 1995. While the book ([Exhibit B](#)) is slick and glossy and looks historically very nice, it also has a lot of factual information in it.

The only thing I noted from your presentation, at least in the cursory glance that I have, is that it does not break down the difference between the Second and the Eighth Judicial District Courts concerning the unusual load of the family court, which I think is one of the more unusual areas of court need and on which we are spending a huge amount of time both jurisdictionally and legislatively. We also need to know what is happening with the younger part of our populations, a breakdown on domestic violence and senior citizens, which are becoming a newer part of our population.

The traffic stops, of course, is kind of interesting because we recognize it as a funding formula that the justice and municipal courts have used in order to keep alive some of the revenues for those court systems at the local level. I am surprised that 50 percent of your funding for the operation of the court comes from filings. Is that a statistic that has held true over the last couple years?

Chief Justice Becker:

It is the Supreme Court operations. Yes, that is a statistic that has held true. It is a statistic that I think you know, from the Court Funding Commission, is a disturbing one, because this function of the Supreme Court, that is, deciding appellate cases, is a core function of the court system under the *Constitution*. It is one of the things that the Court Funding Commission reports, that type of unstable funding for a core function of a branch of government is something we recognize should be changed.

Chairman Anderson:

I am sure Mr. Titus and company will explain the funding questions to the Committee. I would also remind the members of the Committee, we are dealing here with a different area since the Court itself is a separate branch of government. It is one of the jurisdictional questions where we cross paths on a very limited basis. They are answerable to the voters and, therefore, they really do stand alone. So when we ask questions relative to their prerogatives and our prerogatives, it is always tricky, so I appreciate both the Administrative Office of the Courts in trying to smooth interactions. It is not quite the same asking the Executive Branch of government what they did with the things we told them to do when they went forward.

Chief Justice Becker:

Thank you, Chairman Anderson, for pointing out not discussing the family courts, as it is a substantial part of the jurisdiction of the courts. They handle all matters juvenile, foster care supervision, and the day-to-day litigation involving child custody cases, support, and divorce. Those are huge amounts of the caseload and part of the caseload increase. I am proud to say that our courts across the state, although the Second and Eighth Judicial District Courts are the most populous, are doing a wonderful job of processing those cases in a timely fashion. They are developing self-help programs for the litigants in those areas. They are developing better processing for the cases trying to make the courts easier to understand. They are more accessible for people. The family division, in both those areas, has absolutely tremendous jobs. I apologize to them for not having said that up front. Thank you, Chairman Anderson, for pointing that out.

Chairman Anderson:

I want to make sure that members of the Committee recognize that we are looking at the first 17 pages of the report ([Exhibit E](#)). The backlog of cases that you have on page 4 ([Exhibit E](#)) were relatively extensive when the Legislature met in 1997. Mr. Carpenter offered a piece of legislation relative to the opportunity to the court to divide the Supreme Court into two hearing panels.

We supported that through the legislative panel. So now the question is, how big is the inventory now? Am I to assume that you have a 1,500 case backlog?

Chief Justice Becker:

We have about 1,500 pending cases. We have actually eliminated what we would call the backlog, with one exception. That is, the civil pro per cases where both parties are representing themselves or when one party is pro per. We are currently reorganizing ourselves in part to address that. Our civil division has only 8 attorneys. Our criminal division has 13 attorneys. So we have been unable to eliminate the criminal backlog and the civil backlog because of the increase in the complexity of cases coming on appeal and, in large part, because of ballot questions and initiatives that the Court has had to deal with. These are enormously time-consuming cases because they have to be done within a short period of time. We try, whenever possible, to get these cases out so that the ballots can be printed in a timely fashion. Sometimes that is not possible depending upon the time of the filing with us. We have had a huge increase in the number of election challenges. There has been a huge increase in the number of those types of cases. Because of that, we have fallen behind on the civil pro per. We are looking as to how we can try and tackle that backlog internally. We are asking for one additional civil attorney. We hope within a year's time we will have that under control.

The pending caseload is a reflection of the time for processing cases. So we have a certain number of cases that are going through the settlement program. We have a certain number of cases that are going through briefing. We have cases that are set for hearing and then we submit and write the orders. So that is really the flow of the Court. Our goal is to make sure that we are disposing of more cases per year than we get cases coming in so that amount does not increase. With the exception of the civil pro per cases, we have, in fact, eliminated a large part of the backlog. That still doesn't mean, however, that people's cases are being processed as quickly as we would like. Just to process 1,500 to 1,900 cases per year and keep up with the filing means that the longer and harder cases and the opinion cases can take up to two years to get to. I can tell you about 73 percent of the Court's cases are decided between six months and a year; that is within the national standards. But the national standards would prefer a greater percentage of our cases be decided within that one-year period. That is what we are trying to work towards.

The way we do that is by triaging, just like you do in medicine. In medicine, you have to decide who gets what treatment and how fast. Who has the most serious condition? We do the same thing in the court system and the Supreme Court with the processing of our cases. They also do that at the trial court levels. A good many of our cases go through the criminal fast track. Instead of

a full briefing on both sides, there is about a ten-page statement that is filed. That statement basically says: here is the transcript to the proceeding and here is what we think is wrong. The state responds to that, or if the state is the one who filed the appeal, the defense responds to it. Based upon that, our staff reviews that transcript and makes a determination if this is an error correction case where there is no real precedent-setting law or there are no real legal issues of any complexity. If there is, we decide the case right then and there. We rely upon information given to us by staff because, in 1,900 cases, it would be impossible for seven people to reach every case. It just is not humanly possible as there are not enough hours in a day. We do have very trained staff; we do supervise them and do random checks on them. I think we do a really tremendous job ensuring that we don't miss errors, that people's rights are protected, and that people get timely consideration of issues.

[Chief Justice Becker, continued.] If it is a case of some precedent value or more complexity to it, then full briefing is permitted and it goes to the justices for a greater workup and more research. Those are the cases where we are reading the briefs, reading the record, and really making more of a personal review of those cases than we would for the remaining cases. This is not a secret. This is how we have had to do business. Otherwise, your appeals would take seven years to decide, and that is not justice.

Assemblyman Carpenter:

I just want to congratulate the Court. You have made tremendous strides not only in the Supreme Court but all down through the system. I think the changes have been very positive. Regarding rules amendments of practice for the Fourth Judicial Court in Elko, how do you change the local rules? Do they have to submit them to you?

Chief Justice Becker:

That is the way it works. In order to try and make sure we have as much uniform rule-making as possible and also to make sure that we are consistent, all of the jurisdictions submit their rules to us. If it is just a matter of we want to do something locally that isn't an issue of consistency throughout the state, we defer to the local courts. We are also helpful to them, as many of the local courts do not have the expertise at rule writing that we have developed amongst our staff in the Supreme Court. They welcome our input on how to phrase things to avoid ambiguities. We review them and, in general, we approve them. On occasion, we will have questions or have some concerns about whether or not something they want to do may have some serious constitutional considerations. We try and work out what they want to do from a practical point of view, then backtrack how we want to do, it in a more constitutional fashion. By and large, it works very well. It has been a very

wonderful, cooperative effort between the courts. I would like to thank you and Chairman Anderson, as the Court would probably be mired in a 2,000-case backlog without the ability to do the panels that you two championed.

Assemblyman Carpenter:

The other day we had the public defender here and he said that every case where someone is sent to prison is automatically appealed to the Supreme Court.

Chief Justice Becker:

We are a state that has an automatic right of appeal. That means that every person who is convicted of a gross misdemeanor or a felony has the right to appeal to the Supreme Court. They have to exercise that right and exercise that right of appeal. But no, not everyone does that. We obviously have a lot who do. But out of the thousands of convictions, only a small percentage appeal. Otherwise, our caseload would be more in the nature of 20,000 or greater when you take the whole state. It is a small percentage of people who actually appeal their criminal convictions, but every one of them has the right to appeal should they choose to exercise it.

Chairman Anderson:

I believe Mr. Carpenter was referring to the death penalty questions where there is an automatic appeal. It is one of the big issues we heard last time, as you may recall. Everybody still has the right to appeal, as the Chief Justice has clearly stated.

Chief Justice Becker:

Yes, death penalty cases are constitutionally an automatic appeal. Even if an individual wishes to waive that appeal, they cannot just say, "I don't want to appeal." It comes up to us automatically, and we have a minimum obligation even when they don't wish to raise any other argument to determine that the death penalty is not excessive, and that it is being fairly administered. That is part of the *United States Constitution's* interpretation by the United States Supreme Court. They can waive all other legal arguments should they choose to do so and there is a procedure for that, whereby inquiry is made to determine if they are doing it freely and voluntarily and that they understand it.

Chairman Anderson:

The Public Defender of Clark County was saying it is the policy of their office to automatically appeal every case that comes before them, following the guidelines that are already there.

Assemblywoman Angle:

I have some concern left over from our last [20th] legislative special session of the tax issues. There was a decision by the Supreme Court regarding our constitutional amendment that requires the 2/3 vote to increase taxes. At that time, the decision was made that education would finally take priority. I have asked for an opinion from the court of appeals and they say that decision is moot. The U.S. Supreme Court upheld the [U.S.] Ninth Circuit Court's decision that it is a moot point and it cannot be used again. It is not a precedent. I was wondering if the Court would be willing to vacate that position.

Chairman Anderson:

Mrs. Angle, we are listening to an overview of the Court. If you want to relate the question to the overview of the Court and not to a specific case, then it would probably be within a jurisdictional question because that would require public comment. We are doing an overview of Court procedures and questions, not specific to that kind of case. I don't want to put the Chief Justice on the spot of having to respond and to remain on focus of what we are doing here.

Chief Justice Becker:

I will defer to you, Mr. Chairman.

Assemblyman Mabey:

As physicians, we try to make people better and I think attorneys do also. Do attorneys ever get together and try to work things out before it goes to court? I get the impression that we are just too litigious. Certainly our growth has got to be a factor in the caseload. We have these meetings as physicians to try to prevent lawsuits and how to take better care of our patients. I just wonder, as a society, are we just suing too often? Is there something as a court that we can do so we don't have all these lawsuits?

Chief Justice Becker:

We do a number of things. For example, the Legislature created a number of years ago the Neighborhood Dispute Settlement Center. There are community dispute centers. We do a lot of mediation and a lot of arbitration. Millions of disputes are settled across the country without ever having a lawyer involved. Lawyers do get together. If lawyers were not out there working to settle things, you would see such an increase in the caseload of the courts that we wouldn't be able to find our way out of a courthouse. There is a lot going on.

The problem is, I think, many of the issues are so complex there is no simple solution. That is one of the problems involved. You have the issues on health care coverage, and the ability of the doctor to make decisions without being second-guessed by insurance companies. You have those instances where

doctors are, in fact, negligent, and they have not performed well. That is true of any profession. There are instances throughout the nation of judges who have not done well. There are instances of police officers, and legislators. There are instances in every profession.

[Chief Justice Becker, continued.] There is also a lot that lawyers do that has nothing to do with litigation, in terms of writing contracts and helping people settle their estate plans. So there is a large body of law out there that the public never sees or is aware of. They also tend not to be aware of the amount of things that lawyers, and the doctors do this as well, but I can only speak to the details of my own profession. I can tell you that millions of dollars were donated this year in free legal services by lawyers to people who could not afford it. They are serious cases where the spouse or the children have been subjected to physical or mental abuse. There have been instances where individuals may have mental difficulties, and they have gotten into trouble where they are unable to communicate except through an advocate.

As to your question, "Are we too much of a litigious society?" If you mean filing in courts, I don't think that reaches the issue. I think the issue is many years ago when people had a problem they worked it out themselves. Human beings have a tendency not to use common sense sometimes to work things out. So there are things in the courts that should have been worked out between two people. The lawyers haven't started the problem and the lawyers are not exacerbating the problem. The people started it and didn't work it out amongst themselves.

One example of an actual case is of two neighbors regarding an olive tree. When the fruit gets all over everything, it makes a mess. The tree was on the borderline of the property and it was growing over into the neighbor's yard. One neighbor asked the other neighbor to trim the tree. The other neighbor said no, I don't want to do that. The first person said if it was a question of money that he would do it. The other neighbor said he didn't want the tree touched. So the first neighbor trimmed the tree and he did have a right to do that as he only trimmed it to the property line. The other neighbor responded by slashing tires. The first person responded by breaking windows. This went on for about six to nine months until they ended up running around shooting guns. Now we have multiple felony cases because two idiotic people couldn't just trim a tree. There are lots of those in the system so I understand your point.

Chairman Anderson:

The district attorney's representative told us that 98 percent are plea-bargained in the criminal area. The difficulty of civil litigation in the tort area where people

are not satisfied of the outcome of services that were provided or they have forgotten the basic rules of good behavior.

Assemblyman Mabey:

My problem is that I have patients that come in and ask for a certain procedure and I just say no, that I won't do that. As an attorney, if somebody says "I want to sue this person" and the attorney says they don't have a case and he won't do that. Certainly there may be another physician that would do the procedure. Hopefully, they agree and wouldn't do it either. But I just hope that would occur in the legal profession also.

Chief Justice Becker:

Oh, I think that occurs a great deal in the legal profession. Remember, in the legal profession, many of those cases are contingency cases. If you can't win the case, you don't get paid. But I agree with you; it is very similar and I think that is a good analogy. There is nothing to prevent that patient from going to another doctor and it's the same thing in the legal profession. There are many, many lawyers who will tell someone no, this is not worth suing over. Sometimes people like that will go to many lawyers, and all of them will tell them the same thing. Then they just file a case on their own. That is one of the issues unlike the medical profession, where they cannot perform surgery on themselves.

Chairman Anderson:

I'm sure part of the answer is the power of the court, under Rule 11, forbidding frivolous lawsuits, that the Court can utilize a relatively heavy hammer against the attorney.

Chief Justice Becker:

We do, and you do see courts across the nation using Rule 11 sanctions to attack the frivolous filing of lawsuits. You see lawsuits dismissed at early stages. There is always a concept that the Supreme Court doesn't uphold summary judgments but, in fact, we affirm a number of them. It is just that we only publish a certain number of opinions. The opinions take much longer to process, so most of our cases are by orders so that we can process more cases in a timely fashion. We uphold a lot of those motions to dismiss summary judgments on frivolous cases.

Ron Titus, Director and State Court Administrator of the Administrative Office of the Courts, Supreme Court of Nevada:

Primarily, I am here to talk about the role of the Administrative Office of the Courts. We have three major areas where we operate. One is administrative support to the Supreme Court. That is primarily in the area of budgets,

personnel, and managing the building. We also administrate the 60 court judges which are paid for with state funds. The second area is the Judicial Branch or court services, which are services directly to and for the courts of Nevada. In the third area is coordination with other entities like the Executive Branch agencies, advocacy groups, or even the federal government in various areas.

[Ron Titus, continued.] In the area of Judicial Branch responsibilities, our planning and analysis group, which was a result of your efforts in 1995, takes care of all the data collection. They are responsible for the annual report ([Exhibit B](#)) you have in front of you. They are also responsible for the report on travel of the rural judges ([Exhibit D](#)). We hope to do more reports like that. It is interesting to note that the judges in our rural areas spend 20 percent of their time on the road. You take a 40-hour week and they spend basically one day, eight hours, a week on the road. Of course, what they are doing is spending eight hours on the road and still working a 40-hour week in the courts. We did that in conjunction on some of the work on rural courts that you heard earlier this week.

We are also beginning what we call phase two of our uniform system for judicial records to improve the report of collected information primarily on major events. An example of information collected would be how many cases actually go to trial and also the times and dispositions of the courts. If there is other information you might like, we would more than welcome any comments you may have on the type of information collected.

Other court services we provide include certification of court reporters, which is something we have been doing for the last three or four years. The Court Improvement Project, which is a federally funded grant, is trying to improve permanency for dependent children at a faster rate. Children are in a state of flux too long in the system, so the goal of the Court Improvement Project is to speed up permanency for the child.

We also work with the district attorneys' offices and Criminal History Repository to standardize domestic violence forms. There have been significant inroads made on standardizing domestic violence forms throughout the state so an officer readily recognizes a protective order and can enforce it throughout the state. That is also happening nationally. There is an effort to standardize the cover sheet so any of the 12 western states can recognize a temporary protective order from our state and enforce it accordingly.

We have a project with the state court and tribal consortium basically getting together the state judges and tribal judges to work out judicial issues. Many of those can be worked out just by communicating and understanding the needs of

the tribes and the needs of the state as well. That has been a very successful project.

[Ron Titus, continued.] In the judicial education area, we have conducted various conferences throughout the state. In fact, ten regional conferences and seminars are currently being conducted for court employees. We are reaching in excess of 600 individuals in these ten seminars around the state that are being conducted this spring.

I do want to talk about our technology efforts collecting all this data. It is much easier if it is done with technology. We recognized that a few years ago that the rural courts do not have the advantage of the technology, so we have started a rural system and provided technology for the rural court system. Chief Justice Becker mentioned our multi-county integrated justice information system that we are working on with Public Safety primarily to speed up the electronic reporting of dispositions to the Repository.

Also, you will be interested in our efforts in the area of specialty courts. Last session, Assembly Bill 29 of the 72nd Legislative Session was passed to provide an assessment for specialty courts. The administrative office was given the responsibility to distribute that money. We appointed a judicial counsel and the Chief Justice appointed a specialty court funding committee to administer those funds. That committee is made up the specialty court judges from around the state. These are the judges that help disburse this money. Initial disbursements were to make up for the General Fund dollars that we had lost because of the assessment. Then the last disbursement just this month, we were able to fund eight new courts with that funding. To date, we have brought in about \$7.3 million and we have disbursed about \$3.2 million of those funds. We get about \$700,000 a quarter for disbursement of that.

Chairman Anderson:

I have been watching the specialty court development and have paid more than just a little attention to it, even though I have had to miss the last couple meetings. First of all, let me remind you that what we were trying to do here is to put this on a permanently funded basis rather than having to shake the olive tree in the next room because they are constantly out there whacking at the bush. We were trying to get the courts in place with the proper funding. My concern is that we under projected what we were going to be able to do because the traffic fines were not there. Then we added a few more courts than we anticipated at the municipal and justice court levels.

[Chairman Anderson, continued.] I am terribly concerned that the jurisdiction that we added last time, as there still seems to be some level of misconception in the last court funding. That was only partially allocated in this court funding program. This court funding program will be coming back again to give them the second part of their funding allocation. Is that correct?

Ron Titus:

The very last page of the handout ([Exhibit E](#)) does have the courts that were funded. The goal that we are hoping to reach, and we are not quite there yet, is to be able to inform the specialty courts how much money they will be able to get for the next fiscal year. They can go to their county and tell them how much funding they will receive from the specialty court funding and then they can plan their budget for the next year. Actual disbursements would be twice a year in July and January. Disbursement is only because of cash flow. The money is coming in each month. As I mentioned, we receive about \$730,000 a quarter, so the cash flow would give them a check in July and a check in January. We have just started to receive funding requests for FY2006, so we are still a little bit behind the curve. We won't know until April or May exactly how much money we will be able to disburse to those courts. They are meeting this afternoon on developing standards for these courts so that we know what we are funding. We will probably rely very heavily on the federal standards. Clark and Washoe courts, as well as our western regional court, are following those standards, and we want to make sure appropriate standards are in place.

Chairman Anderson:

Let me make sure how you are using the term "eastern adult and juvenile". We are talking about those courts that would be similar to the First and Ninth, Fallon, Douglas, and Storey.

Ron Titus:

Yes, that's correct. You mentioned the projections and we are short on what we originally had estimated. That is because the number of misdemeanors are down. We had projected about \$477,000 in assessments. We are down to about \$420,000. You do have a graph on page 23 ([Exhibit E](#)). These are the general assessments where there is a big jump at the end because of the \$10 assessment that was added. On page 24, this is the beginning of the specialty court assessment, which began in July. It took about three months, which is a little bit longer than we anticipated to get up an even keel. We are looking at about \$225,000 a month in collections. We are working closely with the court to collect the \$7 assessment on that as well.

Chairman Anderson:

Of course, part of our dilemma is between the need for technology to go into those courts, particularly in the rural areas of the state, to train the personnel in the background to do the input of material so we come up with a uniform system. There is some reluctance of the system to become uniform in and of itself.

Ron Titus:

That technology is not coming out of the specialty court assessment. It is coming out of our uniform system for judicial records. It is from the individuals that get a \$50 traffic ticket and pay \$100 because of the assessments.

Chairman Anderson:

It is a concern to our constituents who are concerned that the assessments are higher than the fine. Questions from members of the Committee? I would like to remind members of Assembly Judiciary Committee, that for their own personal bill drafts, that Monday is the deadline at 5:00 p.m. The preliminary indication is the Committee itself will have an opportunity to introduce six pieces of legislation. Currently I have five requests. Remember we want to try and keep it within the jurisdiction of our committee.

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

[Introduced himself]. This is a general packet ([Exhibit F](#)) about the Board and Commission and how we regulate gaming in Nevada.

The way this is set up is that the first page inside the cover page is the Gaming Control Board information sheet. It is helpful to first look at what we are regulating and then how is it regulated. The "what is it" part begins with the number of licenses, and you can see that there are a total of 2,913 licenses issued in the state of Nevada. The majority of those are restricted licenses. That means that 15 or fewer slot machines and no table games. So anything above 15 slot machines or anything with table games is considered a nonrestricted license. You can see in that category there are two groups of those licenses. There are 232 in group two and 186 in group one. Those are broken up in groups by dollar amount of gross gaming revenue. Then we also have the other licenses such as manufacturers, distributors, and slot route operators.

The next bit of information gives you an overview of the mix between slots and table games and what the current totals are. You can see on the game side there are 6,040 table games. Because of a quirk in the definition of "game," poker is not considered under the Nevada statutes to be a game. It is considered to be a "table." Poker is listed separately and you can see there are

533 poker tables listed. That is as of June 2004. That number has gone up significantly due to the increase in popularity of poker in the recent months, especially all the television attention that game has received.

[Dennis Neilander, continued.] On the slot side, you can see that there are 20,000 slot machines on restricted locations. In the nonrestricted locations, there are 184,000 for a total of 211,621 slot machines. You can see that they are fairly evenly split. The most popular machines are the quarter machines, although the penny machines have seen a lot of popularity within the last year or two. Of course, they are penny machines and the maximum wager on a penny machine is 45 coins, so it is a \$0.45 bet. With ticket-in/ticket-out devices, you don't have to carry a big bucket of pennies around. You have a voucher that you can actually insert into another device. That is really popular right now.

Chairman Anderson:

Before we leave this page, in the nonrestricted group one and group two which are divided by dollar amount, what is the dollar cut in terms of gross that would decide if you are in group one and group two?

Dennis Neilander:

The dollar value on that is \$5 million and \$10 million.

Chairman Anderson:

Under \$5 million you would be in group one, and over \$5 million you would be in group two?

Dennis Neilander:

That is correct. The \$10 million is another trigger. If you're above \$10 million, there are certain internal control requirements that need to be met. The distinction there is that you are still a nonrestricted license.

Chairman Anderson:

So basically, the \$5 million cap is the difference between group one and group two?

Dennis Neilander:

Yes.

Chairman Anderson:

Then there are additional triggers that are applied by you for operations greater than \$10 million?

Dennis Neilander:

The difference between groups one and two is really the level of internal control that you have to have plus the extent of audit review. The group ones have a more full-scale audit conducted on them and different auditing requirements for internal audits and external audits than the group twos do.

The total gaming win is the next category. The total gaming win for FY2004 was \$10.1 billion. Of that, 82 percent came from Clark County, 10 percent from Washoe County, and the rest breaks down into the remainder of the state. Of that, \$6.7 billion is slot wins; \$3.3 billion is game and table win. In this particular year, slots really took off in terms of what percentage of the total win they were. Slots made up almost 2/3 in this particular year. That fluctuates from time to time, but historically it used to be the table game win always exceeded slot win until about ten years ago. Now we have seen almost a reversal in that.

Chairman Anderson:

Is that attributable to the computer technology even for penny games? That is absolutely amazing to me to see the number of those that are out there. They represent an anomaly that has not been present before.

Dennis Neilander:

Yes, I haven't gambled in ten years, so I am not the one to ask. But it seems to coincide with the advent of video devices. As you know from your days in Reno, the old mechanical machines were slower. It was very difficult to change those devices to make them marketable. They were what they were. But with the advent of video devices, it is now much easier to change denominations of devices—to change the software quickly, which will change the appearance of the device—change the game content and they play much quicker. Now they have become fairly sophisticated, and most gaming devices are hooked to an online slot metering system that allows the licensee to monitor in real time what is going on with that machine. What is the whole percentage? What is the amount wagered? What is in the drop box? Those devices communicate together, so the gaming floor has just evolved tremendously over the last ten years.

Chairman Anderson:

The auditing function of the state has similarly been able to increase in terms of both what is recordable and what the actual might be. This would cut down on other problems that happened in the old days.

Dennis Neilander:

In fact, I mentioned the \$10 million threshold a while ago, and one of those triggers is that at a certain point in time coming up next year, if you are in excess of \$10 million in gross gaming revenue, you have to have an online slot metering system. Within those new gaming devices that are approved, they now require in excess of 23 different meters that are internal within that device. That slot machine monitoring system is constantly reading those meters. It is not like the old devices where you had a meter and it was mechanical. These devices now have 23 meters on them and they are internal meters.

There is a breakdown at the bottom left column (page 2 of [Exhibit F](#)) of the ranking of slots and games. If you go over to the right-hand column, halfway up is collections. Again, you can see the amount of taxes we have collected on the gaming win. So the total amount of \$854,515,000 is collected on \$10.1 billion. That is the actual amount collected. Then you can see where that amount comes from by category. Of that, 79.3 percent is the percentage fees. That is the 6.75 percent tax on gross gaming revenue. The amount collected for entertainment tax is 9.9 percent. It used to be the casino entertainment tax but was morphed last session into the live entertainment tax that accounts for roughly 10 percent of the overall collections. The rest of the taxes are flat fees and annual fees. So that gives you an overview of what we are regulating right now.

The way we regulated is on the pages that follow. If we could turn to page 2 ([Exhibit F](#)), this is a wire chart that shows exactly what the board does and how it is structured. If you look at this wire chart, you will see on the left the Nevada Gaming Control Board. Three board members are appointed by the Governor. Then you will see a direct line to all the subsidiary divisions below that. Those are the Board's operating divisions and they report directly to the Board members. You see on the right the Nevada Gaming Commission. You don't see a dotted line or a solid line to the operating divisions. The Commission is an independent body made up of five members. It is a part-time body that meets once a month to consider recommendations from the Board on licensing and disciplinary matters. The Board makes that recommendation and is involved in all the day-to-day regulation of gaming, but the Commission has the final decision on licensing and disciplinary matters.

As you run through these operating divisions, the Administrative Division is obviously our support division for our other divisions and also handles the budget. I have with me today Joe Bertolone, who is our Chief Administrations Officer from the Administration Division.

[Dennis Neilander, continued.] The Electronic Services Division is commonly referred to as the "lab." That is where we test all the gaming devices before they are allowed to be placed in the marketplace. That primarily consists of engineers and we have 12 at this point. They not only test all the new devices, but every time someone wants to make a modification to a gaming device, they have to submit that through the lab. The lab tests and either approves it or disapproves it.

The Investigations Division is primarily responsible for all the licensing investigations. There is a prelicensing investigation for private companies and any individuals involved in those. They also investigate sports books, junket reps, key employees, and the like. The Corporate Securities Division does all the public entities. Prelicensing is done on a corporate level for any publicly traded gaming companies through the Securities Division. Then they monitor those companies so there is a whole monitoring section within corporate securities.

Tax and License does just what it says. They collect all the taxes and issue all the licenses. Our offices are in five different parts of the state; for example, our main office is here in Carson City, but we have an office in Las Vegas.

The Audit Division conducts all the audits on the group. The majority of our auditors are CPAs. We do render taxable opinions with respect to audit. When we do a revenue or tax audit, we do render an opinion in our view whether taxes have been fairly paid in connection with statutory mandate. The Tax and License Division audits the smaller licensees. They audit licensees that amount to about 3 percent of the total revenue. The Audit Division audits about 97 percent of licensees.

The Enforcement Division is our day-to-day people you might see on the casino floor checking dice, dealing with patron disputes, and checking games. They are a 24/7 operation out in the field.

The next page describes the Gaming Policy Committee. It has not been called to order since Governor Bryan. The Gaming Policy Committee can make recommendations to the Board and Commission and to this Body. You can see the membership there, but it is only called at the call of the Governor.

I have already covered the Commission and the Board. On page 4 ([Exhibit F](#)), this is the public policy of gaming. We have new jurisdictions coming in and we frequently meet with new jurisdictions where gaming is an emerging activity. They are trying to set up the regulatory apparatus. We always tell them they should start with the public policy. This is a very important tool for us in

regulating gaming because if the statute is silent or a regulation is silent or doesn't really address something, we always look at the public policy to guide us in our decision-making. You can see these are the tenets that go back to the history of the Nevada Gaming Control Act of public policy.

[Dennis Neilander, continued.] Next is our mission statement on page 6 ([Exhibit F](#)). I am not going to spend any time on that. There is some other explanation what the divisions do. On page 9, there are some phone numbers for our offices throughout the state in case you would need, during the session, a question answered. On page 11 ([Exhibit F](#)) is the meeting schedule for the Board and Commission. What follows is a more detailed breakdown of what games there are right now.

Beginning on page 16 ([Exhibit F](#)), there is an article called "Gaming Nevada Style." This is an older article but it is good because it has a lot of the history of gaming. I know at this point in time, the last thing you want to read more information, but it is actually fairly interesting if you are into the history of gaming.

In the back of the document ([Exhibit F](#)), there is a fee schedule which will show you exactly how many fees are being paid by the industry broken down by game and fee type.

Chairman Anderson:

Regarding the annual state licensing fee that you have outlined on page 33 ([Exhibit F](#)), one game is \$100, and two games are \$200. Was this last set up in 1957?

Dennis Neilander:

Yes, the original annual fees were expanded in 1955, and in 1957. It used to be that the fees for gaming actually primarily went to the counties. The state did not even get a cut of the fees until 1955, when the Tax Commission began to collect a fee. Ultimately, in 1959, the gaming regulatory apparatus was shifted from the Tax Commission to the newly created Nevada Gaming Control Board. I don't know, Mr. Chairman, what those fees were back in the 1950s, but they have gone up over the years.

Chairman Anderson:

Nevada gaming once had the sole table game/slot machine license throughout the United States. Over the last 20 years, that has dramatically changed. Where do we rank in total take? I read somewhere that more money was taken in California and Florida because of their race tracks, and dog tracks in Washington and Florida. So Nevada at one time was only eighth in terms of

total gaming revenue. Where do we place now in terms of competition because of Indian gaming and other states that are involved in the gaming industry and other types of waging systems?

Dennis Neilander:

In terms of total wins, I think Nevada is first in the nation if you are just looking at states. It would probably rank right now Nevada, New Jersey, Mississippi, and then the river boat states. California, because of tribal gaming, is beginning to creep up there. But again, I'm not so sure I would trust the numbers, because I am not sure the numbers are accurate as to exactly how much is coming out of tribal gaming. I don't have that figure with me today in terms of the overall United States tribal gaming number. If you do look at it in just terms of states, Nevada would still be ranked number one.

Chairman Anderson:

In the northern part of the state, the local markets of Washoe County, Carson City, and, I would imagine, South Lake Tahoe and Douglas County, seem to be more susceptible to the inroads of Indian gaming and development of Sacramento and the proposed developments around San Francisco. Since we have a large drive-in from our neighbor to the west, has the Gaming Control Board or Commission itself noted a huge shift because of that and the reaction to Indian gaming?

Dennis Neilander:

I think that the numbers would reflect that it is a factor, in terms of the flattening of revenues in northern Nevada, particularly in the Reno market. There are a number of slot machines in tribal casinos in northern California now. I think we have felt that brunt for some time now. It has had an impact on the gaming markets in northern Nevada. If there is a further expansion in California, it could have even more significant impact going forward. But at the present time, since we initially felt that impact, one of the telling figures is that northern Nevada markets, in terms of repeat visitors per year, was usually around four or five repeats per year from the northern California market. That number has drastically dropped off to where the number of repeats is one or two. So what you're seeing is more convenient places to gamble in California, and a lot of people just simply don't want to take that drive over the hill. It is especially true dependent upon the weather.

Chairman Anderson:

In the 2001 Session, I believe that we had some serious disagreements with the federal government relative to college betting. The Nevada Gaming Control Board and the Commission, through some investigations, were able to demonstrate many of the illegal behaviors by college athletes. As a result of

investigations that you had originally initiated, the NCAA [National Collegiate Athletic Association] followed up your initial investigation. Are you still finding that to be true?

Dennis Neilander:

We continue to regulate sports betting in Nevada. We are the only state that does regulate sports betting. It is part of our regulation of sports betting and we do watch for unusual circumstances in movement of odds in the line. When we see something unusual, we do investigate it. There have been some scandals in the past where we did assist in terms of investigation. We are doing that jointly with the FBI in the case I mentioned.

Chairman Anderson:

I was surprised in watching the activities of last weekend to hear that the sport books, while still being very, very popular in the state, are only a break-even mechanism. They were more interested in what kinds of people they brought into the Las Vegas market. We really don't make that much off of sports books in terms of revenue.

Dennis Neilander:

The margins in sports betting are very thin. It is a thin-margin game. A lot of what the operators do in offering book is often just an amenity for your customers. It is something that gives you incremental revenue but it does not generate a lot of revenue. Again, in Nevada, we believe that less than 1 percent of the total amount that is bet on sports occurs legally in Nevada. About 90 percent occurs illegally outside of Nevada. So we do not believe that Nevada is the answer to this problem. If the problem is that there is illegal betting going on, whether it's college or anybody, it is going on outside of Nevada. I still don't understand the purpose behind the bill.

Chairman Anderson:

It has always been a fascinating topic for me. There are some major issues that are facing the state in terms of gaming. We are still concerned about neighborhood gaming operations in the north. It has become a bigger issue, relative to communities and community involvement where places are located, as compared to the southern Nevada area, which set up a market area system, where you can be and where you cannot be in terms of neighborhood gaming. Do you have any enforcement in that area?

Dennis Neilander:

No, we don't. There are certain provisions within the Gaming Control Act that require local approval to the extent we would never act on something that also required local approval until the local approvals had been obtained. In respect to

neighborhood gaming, that is a policy for both this Body and the local governments to work out. We can enforce that however you decide to do it.

Chairman Anderson:

If you were a resident living in one of these communities and were upset about the proximity of a gaming property, does that generate a volume of complaints to your agency?

Dennis Neilander:

It is not our agency as much as it is the local governments. They have control through their zoning laws over where they want something to go. The state is silent in that regard, but the local laws are not. Clark County, in their case, asked the Legislature to approve of what are called "gaming enterprise districts." These districts are essentially a zoning tool to decide where large casinos are going to be allowed and where they aren't. There are some exceptions to that. That was followed up with Senate Bill 208 of the 69th Legislative Session. That only applied to Clark County. Northern Nevada, at that time, was handling it through their local zoning provisions. Typically, we do not get complaints from the neighbors, as they are appropriately made at the local level.

Chairman Anderson:

I guess I anticipated the answer you were going to give me was that they failed to stop the casino from coming in, and they are already frustrated with the local review board that allowed it to take place. Now that the property is there and it has a day-to-day event, anything they see out of the ordinary they will call you about. They will think you have the ability to reach inside the door in a different fashion than the local government. But from what you said, you have not seen that kind of statement.

Dennis Neilander:

I, personally, have not seen this.

Chairman Anderson:

One of the things on the horizon is, of course, the potential of the various properties being purchased by one another. That is limiting the number of corporations who might fall into this \$10 million break. Are there any unusual set of problems before Gaming Control Board?

Dennis Neilander:

No, we have dealt with a number of mergers and acquisitions over the years. There are some that are currently under investigation now which I cannot comment on. In terms of how we regulate things, it does not create any

particular problem. It is a fact where we must consider a number of factors whenever we look at the issuance of more than one license to the same entity. That regulation has been in place for a very long time. This isn't anything new in that regard.

Chairman Anderson:

We passed legislation several sessions ago relative to computer gaming and setting up standards. We have even dealt with them to put them on moving trains in White Pine County, once upon a time. Have you had any kind of a problem in regulating the trains and the computer?

Dennis Neilander:

Not on the trains but actually on the computers. The Legislature passed a bill which would have allowed Nevada, if it met certain criteria, to go forward and regulate Internet gaming. The thrust of that discussion was the ability of Nevada to stay ahead of Internet gaming, because it was an activity and is an activity that people are engaging in, even though it is illegal under federal law. We did explore that at some length after the bill was passed. There appeared the ability to generate some pretty good tax revenue from outside the state of Nevada. We looked at it and had a number of discussions with the Department of Justice. At the end of the day, they said that they still believed the Federal Wire Act prohibits that type of activity. That pretty much ended that issue.

There is other technology out there that is similar to some of the technology we talked about, with respect to Internet gaming which people would like to deploy on an in-state basis. It would be gaming of a remote kind that could be offered in locations within Nevada but only to persons who are physically located in Nevada. So the notion of that may be something you will be asked to deal with in this session. They do this in the United Kingdom. For example, you can have a handheld gizmo that you set up a front money account and then you get your handheld gizmo. It's like a big phone and you can carry it around and play blackjack and make sports wagers. You may be asked to deal with that question from a policy perspective this session. Obviously, it could only be used within the state of Nevada and probably only in certain locations that are already licensed. I don't think you want people wandering around in their living room with that thing. It's a question you may be asked.

Some groups approached the Board and the Commission during the last couple of years. We have had a number of discussions about intrastate gaming and how you might easily use technology for making more convenient and a better experience for gamers. So whether that generates more revenue, I don't know. These are the kinds of questions that may come up this session that they did come up with at the Nevada Gaming Commission hearings. The guidance we

have in the statutes right now really was aimed at Internet gaming. The whole presumption there wasn't that we were going to do this in the state of Nevada, we were going to accept wagers from all these other jurisdictions that are currently betting on the Internet. So there was an ability to generate potentially large amounts of revenue from these Internet visitors. It was looked at a totally different context back then.

Assemblyman Carpenter:

In regard to Indian gaming, is there much of the winnings that go to the state or is most of it kept by the tribes themselves?

Dennis Neilander:

There are two ways that it works. Under the Federal Indian Gaming Regulatory Act of 1988, it is very clear that you cannot tax the tribes and you cannot assess a tax on gaming. Now there is a series of court decisions that have followed since 1988 which have concluded that if a state grants a tribe a monopolistic ability for gaming, they can charge a fee. So what you see in states like Connecticut and California, where casino-style gaming is not legal on a widespread basis, the tribes have been granted the ability to engage in that activity. Under that case law, the state is entitled to charge the tribes a fee. In the case of Foxwoods [Casino], I believe the fee is 25 percent of their gross gaming win. In California, it varies dependent upon a compact. The governor in California is currently trying to adjust what those fees are. But those are states where under that caseload they are granted a monopoly to the tribes who engage in a type of gaming that is not allowed in the state. If you don't do that, then what the federal law says is that you cannot tax them. You can still charge regulatory fees and things like that but it cannot be a tax. The majority of the tribes are keeping the vast majority of their revenue that they generate.

Assemblyman Carpenter:

Many of the Indian tribes' locations are run by licensees in this state. Do we get any revenue from them, or do we have any control over them or is that up to the other states?

Dennis Neilander:

We would not get any revenue from them, but we do have control in the sense that any time a Nevada licensee engages outside the state of Nevada, they are required to report that to the Board. There is a whole series of reporting requirements under something called the Foreign Gaming Act. In the instance of a Nevada licensee managing a tribal casino on behalf of the tribe, we would be notified and we do have the opportunity to look at that if we so desire. So we do know what the tribes are doing, but the state does not receive any revenue from that activity.

Assemblywoman Allen:

In regard to the rise of poker tables, you mentioned revenue to the State from the play of poker is somewhat limited, similar to sports wagering. Is this correct?

Dennis Neilander:

Yes, that's correct.

Assemblywoman Allen:

In my own personal opinion, I don't see the poker craze diminishing any time soon. Have you noticed any reciprocal lack of play in other table games with the increase in poker play?

Dennis Neilander:

No, I would have to say I have not seen that. It does not appear people are not, for example, playing 21 and instead playing poker. That is hard to say, but I don't believe I have seen that. The way that is taxed is that poker generates for the casino a "rake." What happens is that everyone contributes by anteing up and then splitting it up among the players. The casino takes a "rake" or a "vig" or vigerish off the top and it is a small amount, and then they pay 6 percent of that amount. So it is a very small taxable benefit to the state. The one thing to look at if you are looking at generating revenue would be to charge an annual fee for the table itself. That would be difficult also since the casinos really don't make much money off of the poker game. It's like a lot of things. They hope that the patrons who are playing poker will then also go do something else like play the slot machines, go shopping, or go to a restaurant. It's kind of a draw.

Assemblyman Mortenson:

If a gamer is a resident of Nevada and they operate an Indian casino in another state, they get an income for that and they bring it back to this state to their home office. The state does not get any cut whatsoever from that? It is not considered part of their earnings and, therefore, the state does not get any part of that. Is that correct?

Dennis Neilander:

That is correct.

Assemblyman Mortenson:

So what we collect from any company is only what they generate in this state, not what they generate in other states and bring in. Is that correct?

Dennis Neilander:

That is correct.

Chairman Anderson:

We were worried about that relative to the fact that some of these new acquisitions that are going to take place will be in Illinois, Mississippi, and Louisiana. We have never reached into their basket because they pay at a different rate than they do here in Nevada, and they have a different scheme of control. Your concern is that we know that they are there and in operation in another state, and if we find somebody has been disingenuous with their activities in another state, that could reflect upon the policies of their treatment here in the state of Nevada.

Dennis Neilander:

Yes, it could, and that is the primary purpose of it. I think you would have major constitutional problems if you tried to tax somebody's earnings that they earned in another state, based on a wager based in that other state. I think it would be a difficult thing to do from a constitutional point.

Assemblyman Mabey:

I have a question regarding slot machines in convenience stores and grocery stores. I would like to know if we have the numbers on those versus if you took away the total, minus the casinos and bars. What is the history? Have there always been slot machines in stores like that?

Dennis Neilander:

I'll do the history first. Prior to 1995, there was not a restriction on the types of places where you could have restricted gaming. Rather, the regulations did not address that. They did say that you should take into account whether the location is near a school, a church, or a daycare center. But it didn't say you could put them in a grocery store but not in a drug store. The Nevada Gaming Commission, over a series of many public hearings, then adopted Regulation 3 which now says that you can have restricted licenses in convenience stores but you can only have up to 7 machines unless there is extenuating circumstances. You can have up to 15 machines in grocery stores, drug stores, bars, or taverns. We used to have slot machines in used car dealerships, and bait and tackle shops, and some of those are still grandfathered in. So from time to time you will see a slot machine in a hardware store in Fallon. But on a go-forward basis, there now is a restriction in terms of the number of machines and where those machines can be.

Breaking that down further in terms of how many devices are in convenience stores, I would have to get that for you. I do think we did categorize it that way at one point in time so I probably can get that for you.

Chairman Anderson:

Relative to the nature of this particular beast is the slot route operators. I think it provides an unusual set of problems in and of themselves. So part of your question is, if I am a slot route operator, I may own in reality, because of the number of locations along my route, more slot machines than many of the large gaming casinos in the state. That's not an unusual factor. Some of these slot route operators are very, very small and feel very, very discriminated against relative to most of the gaming control policies that seem to be focused on big institutions rather than the grocery store or gas station reality. Part of the regulatory problem is tracking what the slot operator does, his relationship with the local business owner, and the determination of what their split is between them.

Dennis Neilander:

Yes, it is not a problem but it is something that we look at in every licensing of them. They can do it one of two ways. There is either a space lease, where the route operator is actually leasing the space from the convenience store to place his own slot machines. The space lease might be a flat fee; for example, a certain amount per machine. Or they can set it up as a participation agreement where the route operator is participating in gaming revenue together with the store owner. So there are two different kinds of contractual relationships and we do look at those carefully when they come through.

Chairman Anderson:

I don't know how many members of the Committee get a little letter from somebody who monitors the activities of the Gaming Control Board and the Gaming Commission. Whoever sends out this letter tells us about the interesting things like their demand to make sure there is a mirror in the left-hand corner so juveniles cannot approach the machine and the nature of the questions that are often asked by small-time operators.

Assemblyman Mabey:

I hope one day in Nevada, just like you can't have a slot in a bait and tackle shop now or a barber shop, that they won't be in a grocery store or a convenience store. I think that is my point. I was just curious how much money was gained from gambling on slot machines in a convenience store.

Dennis Neilander:

We can certainly try to break those numbers down for you.

Chairman Anderson:

I think the issue is sometimes the slot route operator is running a huge chain of machines and, therefore, does have a huge amount whether the local businesses are making a dramatic amount or not. But you do regulate where they go, how it is done, and the visibility to the public and the security of where it is.

Dennis Neilander:

The question is, is a grocery store a suitable location for gaming? That is why I'm glad you're a legislator because we just enforce the laws. If you decide that is not appropriate, we will make sure they are not in there.

Chairman Anderson:

It's just that we can't take something away from somebody that they already have. That's why the bait and tackle shop keeps that slot machine cranking. Are there any other questions from the committee? For the Committee's information, the Nevada Gaming Policy Committee is comprised of Senator [Mark] Amodei and I who, having been appointed in 1995, have never been called. In talking to my predecessor, it never happened to him either. It has got to be something pretty monumental to be called, although we anticipated with the computer thing, there may have been a need for us to reexamine the overall public policy involved there. I would venture to say, if you were to follow the issue you were talking about, Assemblyman Mabey, that it would be of that kind of consequence that it would require from the Gaming Policy Commission.

[The meeting was adjourned at 10:34 a.m.]

RESPECTFULLY SUBMITTED:

Carole Snider
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Judiciary

Date: Feb. 11, 2005 Time of Meeting: 8:12 a.m.

[illegible]