

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

**Seventy-Third Session
May 3, 2005**

The Committee on Judiciary was called to order at 8:10 a.m., on Tuesday, May 3, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator John Lee, Clark County Senatorial District No. 1
Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Risa Lang, Committee Counsel
Jane Oliver, Committee Attaché

OTHERS PRESENT:

Lance Van Lydegraf, Attorney at Law, Reno, Nevada
Randal Munn, Special Assistant Attorney General, Office of the
Attorney General, Department of Justice, State of Nevada
Laura Mijanovich, Northern Nevada Coordinator, American Civil
Liberties Union of Nevada
Rhonda Mushkin, Private Citizen, Las Vegas, Nevada
Mendy Elliot, Private Citizen, Reno, Nevada
Judge John Tatro, Justice of the Peace, Department 2, Carson
City, Nevada
David Sarnowski, Executive Director, Judicial Discipline
Commission, Nevada Standing Committee on Judicial Ethics
and Election Practices
Lieutenant Stan Olsen, Executive Director, Office of
Intergovernmental Services, Las Vegas Metropolitan Police
Department; and Legislative Advocate, representing the
Nevada Sheriffs' and Chiefs' Association
Lieutenant Steve Franks, Commander, Financial/Property Crimes
Bureau, Las Vegas Metropolitan Police Department
Alan Peters, Special Agent, Las Vegas Division, Federal Bureau of
Investigation, Las Vegas Division; and Representative,
Nevada Cyber Crime Task Force
Sergeant Michelle Youngs, Public Information Officer, Washoe
County Sheriff's Office; and Legislative Advocate,
representing the Nevada Sheriffs' and Chiefs' Association
Tara Shepperson, Executive Director, Nevada Cyber Crime Task
Force
James Jackson, Legislative Advocate, representing Consumer Data
Industry Association
Dr. Dotty Merrill, Assistant Superintendent, Public Policy,
Accountability and Assessment, Washoe County School
District
Ira Victor, President and Chief Compliance Officer, Privacy
Technician, Reno, Nevada
Chris MacKenzie, Legislative Advocate, representing American
Express

Bill Uffelman, President and CEO, Nevada Bankers Association
Buffy Dreiling, Legal Counsel, Nevada Association of Realtors
Dave McTeer, Division Chief, Information Technology Division,
Department of Administration, State of Nevada
Michael Torvinen, CPA, Administrative Services Officer IV,
Director's Office, Department of Human Resources, State of
Nevada
Kim Huys, Acting Chief Deputy Controller, Office of the Controller,
State of Nevada
Lynn Chapman, Vice President, Nevada Eagle Forum
Janine Hansen, President, Nevada Eagle Forum

Chairman Anderson:

[Called the meeting to order and roll called.] Let's turn our attention to S.B. 164.

Senate Bill 164: Revises provisions requiring inclusion of personal identifying information in court orders and judgments relating to parentage. (BDR 11-1049)

Lance Van Lydegraf, Attorney at Law, Reno Nevada:

I am in support of S.B. 164. This is a housekeeping item to bring this statute into compliance with statutes that your Legislature amended, I believe, in 2001. Those amendments were made to acts that required child support orders and divorce decrees to contain confidential information that was accessible to the members of the general public and could be accessed and used for identity theft.

This bill brings this statute into compliance with the protections afforded in divorce decrees and child support orders, that confidential information shall be maintained in a confidential manner and not be part of a public record.

Chairman Anderson:

I'm surprised we didn't catch it when we went through it the first time. Let's close the hearing on S.B. 164.

Senate Bill 331 (1st Reprint): Makes various changes concerning Advisory Commission on Sentencing. (BDR 14-111)

Randal Munn, Special Assistant Attorney General, Office of the Attorney General, State of Nevada:

[Mr. Munn read from prepared testimony, [Exhibit B](#), which is incorporated herein.]

On behalf of the Attorney General, we request that the Committee consider breathing life back into the Advisory Commission on Sentencing, by amending Chapter 176 of *Nevada Revised Statutes* (NRS), and place the chairmanship for the Commission permanently in the *ex officio* position of the Attorney General.

Chairman Anderson:

The original legislation came through this Committee in 1995 when we did the Governor's bill about truth in sentencing. The fear of the Legislature was what the truth-in-sentencing bill was going to do, so they created this Sentencing Commission, which the current Speaker and I served on. The current Chair of the Senate Judiciary and I served on it together. When it no longer seemed to be doing anything, we recommended that they do away with it.

Senator James tried to do away with it several times. In this House, some of us believe that it should still exist as an opportunity to review, particularly because of Mr. Jim Austin's studies: prison overcrowding in the state, whether we were going to overburden the prison system, and whether the judges had sufficient information.

It was because the Attorney General's Office ignored the Sentencing Commission that we got into this mess of not utilizing it. Do we think it's going to be okay now?

Randal Munn:

Attorney General Brian Sandoval served on this Commission when he was in the Legislature and had affection for its purpose. In conversations with Mr. John Comeaux [Director, Department of Administration], he was informed that the Commission was sitting over there in a file in his office. Whether it was necessary or should be revived, we've certainly deferred to the wisdom of the Legislature whether it should continue. If it's going to be in law, we feel that it should be serving its role. It's not that labor-intensive to meet occasionally, to discuss the statistics that are being developed, and make recommendations. We would leave it to a reformed Commission to determine which direction they would like to go.

Chairman Anderson:

With all due respect to the Attorney General, it would appear that he may not be in that position for a long period of time. He might be moving to a federal

position of some importance. Does the Attorney General's Office believe that it will become more active in the future, working with law enforcement agencies and other groups and to keep the prisons from being overcrowded, which was the purpose of the Sentencing Commission?

Randal Munn:

We proposed our BDRs before he heard where his future might lie, but it doesn't change his opinion of the need for the Sentencing Commission. A new Attorney General may have different feelings, but we would have to speculate at this time, so I'm carrying the mission of my boss.

Chairman Anderson:

I agree with him on this particular issue in part, so it's probably okay.

Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union of Nevada (ACLU):

To the extent that the bill adds the Director of the Department of Corrections and the Attorney General, we support the bill. The Attorney General is the leading lawyer of the state, so it's important that he be part of it. The Director of the Department of Corrections is in charge of, and knowledgeable about, the cost of maintaining the prison system and is a very important addition to this Commission.

We strongly support the addition of a public defender's office representative to this Commission. There is no one to represent such an important stakeholder, and it would be advisable, from the point of the ACLU, that someone from the public defender's office be added to the Commission.

Chairman Anderson:

Did the public defender's office ask you to do this?

Laura Mijanovich:

No. This is the position of the ACLU.

Chairman Anderson:

We will close the hearing on S.B. 331.

Senate Bill 234 (1st Reprint): Revises qualifications for Supreme Court Justices, district judges and justices of the peace. (BDR 1-775)

Senator John Lee, Clark County Senatorial District No. 1:

George Washington once wrote, "The administration of justice is the firmest pillar of good government, essential to the happiness of our country and the stability of its political system."

We've all seen the Lady Justice, the scale that implies justice is blind. I'm trying to tip those scales today toward experience and maturity. I'm proposing that we require some experience in those we elect as judges.

Currently in Nevada, if you want to practice medicine, if my information is correct, you have to have a medical degree, completed 36 months of progressive post-graduate education, and pass a written or oral exam. To be an anesthesiologist, it's 4 years of college, a 4-year medical degree, and 4 years in an anesthesiologist program. To be an orthopedic surgeon, you need 4 years of college, 4 years of medicine, 1 year of internship, and 4 years of residency. To be a master plumber in the state, which I am, it is 4 years to be a journeyman and then 2 years to get your master plumber's license.

To become a judge in Nevada, the qualifications are:

- 25 years old
- A licensed attorney in Nevada
- An electorate and bona fide resident for 2 years preceding the election or the appointment
- Not been removed from any judicial office by judicial commission or legislative body

With this bill, I'm trying to see that young attorneys have enough time to matriculate and become experienced in their career by serving for 5 years in practice before they become eligible to be judges.

In Clark County, to be a district judge or a hearings master, if you're an attorney, you have to have 8 years of experience in professional legal work, including 4 years practicing as an attorney. There are more requirements to work under a district judge than there are to be a district judge.

When you join a large law practice in Nevada, usually, you're not made a partner immediately. You will have 7 to 8 years of practice with that firm before they make you a partner. They want you to get some experience and see you in action. They want to know that you know what you're doing and that you can represent the firm profitably.

[Senator Lee, continued.] Young, inexperienced attorneys who become young, inexperienced judges often have young, inexperienced law clerks writing their briefs. At least 20 states require State Bar experience of 5 years for a district court judge. In the Supreme Court, it's 10 years.

We need to have the brightest and most experienced minds to lead and protect our great state in the Supreme Court. California has 10 years, Hawaii has 10 years, and Idaho has 10 years. In some states, after the age of 70, you can no longer be a supreme court judge. I don't believe that you're going to diminish yourself at age 70, but I do believe the 10 years of experience is very important.

Risa Lang has prepared this document ([Exhibit C](#)). She's answered questions regarding which judges are currently licensed in this state, and she goes through this exercise. This bill won't put anyone who is currently a judge in peril. They will be able to keep their position and judgeship.

There are sections in the state that have fewer than 400,000 people. In those areas there will be different qualifications, because the opportunity to have judges in those areas is less. In your hometown, Mr. Anderson, there was a person who thought he might fall within that envelope, and so we changed the effective date for that person to June 30, 2001.

I'm asking that we look at the people we're going to elect and hold them accountable. We need to understand what we're doing when we elect judges because we're at the mercy of the court, so we want them to have some practical experience that has been applied in the field of law before they become a judge.

Chairman Anderson:

I was the Chair of the Sparks Charter Committee for 10 years before coming to the State Legislature. One of the questions that came up was whether we should change the municipal charter to require judges to be an attorney. The municipal judge at the time was an attorney, and he was hopeful that it would change.

I ran into Justice Cliff Young of the State Supreme Court at an event and invited him to come and speak on this issue. He spoke to the Sparks Charter Committee about the question of whether you needed to be an attorney to be a good judge. He pointed out that attorneys who are JPs [justices of the peace] and municipal judges are reversed more frequently than nonattorneys that appeared in front of the Supreme Court.

[Chairman Anderson, continued.] Members of the Committee asked why that might be. He said that nonattorneys had a tendency to follow the letter of the law as written by the Legislature more closely than attorneys, who felt that they had—because of their superior knowledge of the law and legal training—more freedom and judicial discretion to do what they wanted to do. That's an issue we deal with in this Committee from time to time. It's an old discussion.

I appreciate the intent of this amendment ([Exhibit D](#)), to take the township question out of it. Everybody in Clark County, and some of the larger metropolitan areas, will require their JPs to be attorneys. Will this be a requirement in the rurals?

Senator Lee:

That's correct. We have counties over 400,000 and counties under 100,000, and we have different levels of requirements for each of them.

You bring up an interesting point. In justice court they handle cases up to \$10,000, which is a court of limited jurisdiction. District court takes it from that point. Municipal court handles the municipal laws within the city, though sometimes I think the municipal courts in larger cities need to be judges. At this point in time, I'm not interested in seeing that happen.

In the town where I live, North Las Vegas, you do not have to be an attorney to be a municipal court judge. Also, in your hometown, they don't have to be.

Chairman Anderson:

The city charter, I think.

Senator Lee:

I think it is a charter question. We have some wonderful men here who understand the technicalities of the rurals more than I do.

Chairman Anderson:

What you're after here is the amount of experience an attorney would have. He has to have passed the Bar and practiced law. As long he's passed the State Bar and he's been out there doing whatever he's been doing, that will count as experience?

Senator Lee:

This bill doesn't require that the attorney be in the courtroom every day. You could be a trust attorney. Whatever form of law you went into, you can practice within that form. Within 5 years, you've probably seen and been involved with a lot of different situations and cases. If you're 22 years old when you get out of

school and then you practice law for 3 years, you're now about 25 years old. Then, you have 5 years of practice out in your field of endeavor. By that time, you're roughly 29 to 31 years old, and you've probably had some experience in the world. You probably bought a home, acquired some credit cards, had some children, and now you've had some of life's experiences.

[Senator Lee, continued.] A lot of the education to become a judge also has to do with practicing in life, going through experiences, and knowing the pain of some of the situations you might come across when you're a judge. A young person just out of college doesn't have the experience that a Mr. Manendo or a Mr. Mabey might have in certain areas of life. That's the thing that I'm looking to see that we have, a more mature experienced person in judgment over us.

Assemblyman Carpenter:

I don't have a problem with the 5 years of experience, but I'm wondering how it would work with the 5 years of experience in another state or the District of Columbia. Our laws are different from other states, and I think the way the present law is, it says, "Admitted to practice law in the courts of this state." It seems to me that there is a conflict there. He's admitted to practice law in a court of this state, but then we're going to say that he has to practice law in another state or the District of Columbia. In lines 11 through 13, they have to live in this state for 2 years before they can be a Supreme Court justice. I'm wondering about the possible conflicts, and I would feel a lot more at ease if it required them just to be a lawyer and practice in this state, rather than other states, before they're elected.

Senator Lee:

That's a very good question. If you lived in Montana and you were a cowboy, you could probably come to Nevada and rope cows too. If you had 5 years of experience as a cowboy up there, you could probably cowboy here. We're looking for some experience within the trade, not holding anybody back. This amendment was added in the Senate Judiciary Committee. It was a friendly amendment. They felt that you'd experience the same things there that you probably would experience here. It would be incumbent upon you to get up to speed on the idiosyncrasies that we have in Nevada, and by practicing here you would probably learn those techniques.

If there's angst towards that, I'm willing to work with it.

Assemblyman Mabey:

We've all had the opportunity to go down and file for office. With this requirement, will the attorney have to bring in some form of paperwork showing that he has been a licensed, practicing attorney for 5 or 10 years at the time he

files for office? I'm curious about how we'll check up and make sure that this person is eligible to run, assuming this bill passes and becomes law.

Senator Lee:

Anybody can go down there and put their name on an affidavit to be a candidate. Whoever was running against you would probably go to the State Bar and make sure that you were competent in all the requirements to be a judge. That wouldn't be a real big issue. Your background would be scrutinized quite easily, and the State Bar would have all the information there concerning you and your experience levels. You would be disqualified by the registrar of voters in the area that you live. The ladies at the county wouldn't be responsible to see a brochure; somebody would also smell you out.

Rhonda Mushkin, Private Citizen, Las Vegas, Nevada:

I'm a lifelong resident of Nevada. I was admitted to the Bar in 1986. My purpose for testifying today is to work to improve the overall quality of the judiciary. I agree with much of what Senator Lee has presented to you, although I will report that I had worked with Brenda Erdoes of the Legislative Counsel Bureau (LCB) in preparing a similar bill draft. My request for qualifications began at 10 years.

As currently structured, there are virtually no rules or minimum requirements for judges, except that they be a licensed attorney and admitted to practice law in the state of Nevada. As a result, a licensed attorney fresh out of law school, or having just passed the Bar, can run for judge.

Unfortunately, our electorate is not often well educated when it comes to the qualifications of judges; instead, they rely on familiar names, or seemingly familiar names. As a result, recent election results enabled certain individuals to become judges, and they are not yet qualified.

By way of analogy, would you want an apprentice mechanic or a seasoned veteran to repair your car? Would you want a doctor fresh out of medical school, having just completed his residency program, or would you want a seasoned surgeon who has performed your specific operation hundreds of times? I suggest to you that both questions are self-evident.

These are simple, yet profound, examples of the importance of experience and proper qualifications. A judicial job should not be sought for an increase in pay by someone who is unable to make a living as a lawyer in private practice. As I hope you all know, with the growth of southern Nevada, the legal community is unequivocally covered up with work. Even marginal lawyers are covered up with work. So, when you have people running for judicial office that aren't

succeeding in private practice, it is incredible to me that they're becoming judges.

[Rhonda Mushkin, continued.] A significant number of judges in the district court of Clark County didn't take the job for the money. They did it because it was time to give back to their community. In so doing, each and every one has taken a significant pay cut. The community is the big winner, as these individuals are highly experienced, highly knowledgeable, and, most importantly, highly motivated to correctly apply the law.

As a 20-year attorney in private practice, it causes me great discomfort to think that a judge is cutting his teeth on one of my clients. Knowing that judge has never represented a client in a similar matter or had any experience on the subject matter—or even in any manner—is very disconcerting to me. I ask you all, would you feel comfortable if it were you who were appearing as the litigant in a matter in such a predicament? I would suggest that you would not.

If you want to be a Supreme Court mediator or arbitrator, it requires 10 years of experience before you can apply. If you want to be a child support hearing master, domestic violence commissioner, or any other commissioner of a judicial component, it requires minimum requirements. We don't have that same minimum threshold for our judiciary. I would submit to you, there is no logical opposition to these minimum requirements.

Chairman Anderson:

I'm not sure I agree with your basic premise. Just because you're new at the job doesn't mean you may not be the best fit. I'm concerned about one of the conclusions that I draw from your analysis. You don't believe that you could be a good criminal judge unless you practiced in the criminal law area, or you wouldn't be a good construction defect attorney unless you had spent time developing those types of cases, or you wouldn't be good as a family court judge unless you had spent time as a family attorney? Is that your basic premise, or is it just the fact that you passed the Bar and have been in practice for 10 years, or whatever number we put into the bill?

Rhonda Mushkin:

The bill, as currently drafted, does not provide that you have to have a particular expertise in the area in which you want to sit as a judge. By way of example, you can have a civil practice for any number of years and then flip into the family court. I would suggest to you that it is more helpful to have a basic understanding of family law and the case law that supports it. If you have practiced in a civil practice, in a bankruptcy practice, or in a trust practice, then you have at least a threshold understanding of law and equity, the application of

law, and, most importantly, the rules of civil procedure. With all due respect, Mr. Chairman, you do not have that when you come out of law school. It's something that you acquire with experience.

Chairman Anderson:

I don't disagree that experience teaches a multitude of lessons that cannot be derived from the textbook. The question is whether it's just the possession of the license. We're telling the people in an election, you need to expose the differences between the candidates. Are we saying we don't trust the people to do that?

Rhonda Mushkin:

You raise a very good question. As currently structured, when one judge is running for office, oftentimes there are 25 or 30 other judges running at the same time, seeking the same dollars to fund their campaigns. As a result, and as you all know better than anybody else, the cost to run a campaign and to educate the public on your opponent's credentials, or lack thereof, is extraordinarily expensive. Unfortunately, I believe that the judges are on the bottom of the food chain when it comes to campaign dollars, and they simply are unable to educate the public appropriately, so these types of issues are not vetted and known to the public. Because of that, I think these threshold requirements that we are seeking to incorporate into the statute are incredibly important to having a competent judiciary.

Assemblywoman Allen:

For the record, Ms. Mushkin, you're speaking to a 27-year-old on the Assembly Judiciary Committee, so the youth angle really doesn't speak to me. That being the case, I'm not sure that someone who has served as an attorney for 10 years, rather than 8 years, is more qualified, but that's up to us as the Legislature to decide those parameters.

In my opinion, judges shouldn't be elected; that's not the best way to get a really solid judiciary. I prefer something like the Missouri Plan, something with a retention election, so that the voters have a voice in it. This, in my opinion, is something quite arbitrary, and we can debate it one way or the other, but the youth thing doesn't speak to me.

Rhonda Mushkin:

I realize you didn't require a response, but I am 100 percent behind a modified Missouri Plan, and I couldn't agree with you more.

Assemblywoman Ohrenschall:

I have problems with the bill. What would you do if you had a very good graduate of a law school who immediately joins the faculty of that law school as a teaching assistant, gradually works his way up to being a full professor, becomes a world-known authority in his field as far teaching and research goes, and yet has never set foot in a courtroom or an arbitration room? Would you say that person is not qualified to be a judge?

Rhonda Mushkin:

I guess I would pose the same question with regard to a medical professional or somebody else who has always been in the world of academia and has never applied their principles in real life. I think they could have an accelerated program because they have the tools, but I just firmly believe that you have to be in the trenches to fully appreciate the decision making role of these judges.

Assemblywoman Ohrenschall:

I believe fully in the ability of the electorate, and I think that if we're going to choose people by election, we should not trammel the ability of the electorate to choose.

Senator Lee:

Your education would have counted had you been licensed in the state. As an educator, you would have been in practice of sorts. You'd have to be first licensed in that state as an attorney, and not just as an educator. I'm probably debating way over my head here.

Assemblywoman Ohrenschall:

I understand what you're saying, but you'll find a lot of law professors who are not necessarily licensed in the state that their law school happens to be in. They may have initially been licensed somewhere to pass the Bar and show they could do it. They get further, bigger offers as they get more known, and they get to bigger-name schools. They're not licensed in those areas and they know they're not going to go into practice at that point, so there's no point for them to take the Bar. It happens a lot.

Your point is well taken that there could be someone who would qualify.

Mendy Elliott, Private Citizen, Reno, Nevada:

I come to you with a little different perspective. As you can imagine, evaluation of the bench is dinner table talk in my home. My husband presently serves on the bench on the district court. As the evolution of the bench has occurred, there's an expectation by the people that our judges have a foundation to issue

those decisions that are deemed appropriate, based on their ability to interpret the law.

[Mendy Elliott, continued.] The judicial process requires an expertise, so that the appeal process doesn't continue to put additional pressure on the higher courts. The appeal process has created a ripple effect on all of the higher courts. This bill would at least create a foundation. We would hope that the base knowledge exists.

Previously, the judicial system was not burdened with complex issues. When I started in banking in 1977, we did loans based on a handshake. No longer is that the case. Mr. Chairman, as you can attest to, all of the laws that have come from all the legislative bodies across the land have created intricate contracts that have to be interpreted by the law. It's unfortunate, but it's a reality. I know that the judges take a lot of thought and due diligence when they're ruling on their decisions.

Does a law degree make somebody a good judge, or a good attorney? It doesn't, but at least it provides the foundation for an opportunity of success.

Assemblywoman Ohrenschall:

The present Legislative Counsel here has been Legislative Counsel for 15 years. Before that, she worked in the Counsel Bureau. She has a very distinguished record as Legislative Counsel. Would you say that she is not qualified to be a judge? I don't believe she's ever taken the Nevada Bar. Why should she if doesn't plan to practice? She plans to advise the Legislature. If she decided to run for office, should she not be as qualified? We in the Legislature give our full trust to her.

Chairman Anderson:

I'm under the opinion that the current head of LCB Legal has passed the State Bar and in fact, practices in front of the State Supreme Court, as we have several attorneys who do.

Let's close the hearing on A.B. 234.

Senate Bill 442 (1st Reprint): Makes various changes relating to Commission on Judicial Discipline. (BDR 1-218)

Judge John Tatro, Justice of the Peace, Department 2, Carson City, Nevada:

I'm Co-Chair of our Nevada Judges Association Legislative Committee. This is a simple bill about the Judicial Discipline Commission. Under current law, it says, "The Supreme Court may appoint two justices of the peace or two municipal court judges in a judicial proceeding against a lower court judge."

We're asking that they be required to appoint two justices of the peace or two municipal judges in formal public proceedings. It's a matter of being able to be tried by your peers—a fairness standard.

David Sarnowski, Executive Director, Judicial Discipline Commission, Nevada Standing Committee on Judicial Ethics and Election Practices:

We have a seven-person Commission. Our two judicial commissioners are appointed by the Nevada Supreme Court, and they come from the district court level of the judiciary. We have alternate commissioners from the limited jurisdiction courts. Presently, the rules provide that a respondent or a judge before the Commission, from the limited jurisdiction courts, may ask for the participation of those alternate commissioners.

This bill would require the Commission to involve the limited jurisdiction judges. The Commission has no objection to the bill in its present form as it was amended in the other Body. The numbers show that we have, on average, about one public proceeding a year with a respondent judge from this level of the courts. I don't think it would be an undue burden, and therefore, we support the bill, subject to your questions.

Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union of Nevada (ACLU):

The first print of this bill included a speed-up provision that said, "Investigator shall complete the investigation within 180 days after it is assigned." The ACLU is concerned that we are adding more judges to this panel. This panel is to investigate disciplinary issues and alleged misconduct. To put more peers in this panel would make it more difficult to get an objective process.

The main point today is that we feel strongly that the speed-up provision should be included, not removed.

Chairman Anderson:

I'm sorry, please say that again.

Laura Mijanovich:

There was a request that the speed-up provision be removed, and the first reprint does not include it.

Chairman Anderson:

Did they do that in the other House?

Laura Mijanovich:

Yes. We strongly believe that this should be included, and we have some reasons for it. The ACLU has been involved in litigation regarding this point. There are cases that have languished for years, and the ACLU has not been able to speak about it because there is a gag order. This is another point that we are litigating in court. If a speed-up provision is included, it will ensure that the complainants are not threatened by the statute of limitations.

These cases sometimes languish. There is a case that we had—and we're not allowed to speak specifically about it because of the gag order—that has been sitting for two years without any action, despite phone calls and requests for a speed-up of the process. At this point, the complainants are facing the statute of limitations if they want to file a complaint in court.

It's important that you consider that this speed-up provision be included in the bill.

Chairman Anderson:

I'm looking at S.B. 442 as it was introduced. You realize that would probably kill the bill?

Laura Mijanovich:

I realize that.

Chairman Anderson:

The Senate took it out, showing their displeasure with that line. What is the argument for putting it back in?

Laura Mijanovich:

I am here bringing testimony of our experience dealing with this provision. If it gets removed, there is a serious danger to people trying to get redress for alleged misconduct of judges. They would not be able to do that, because there is no time limit for these investigations.

The general public would not want a judge who is accused of misconduct to sit in that office for a certain amount of time, particularly if those allegations may be true. There's an interest on the part of the general public and of the particular complainants that there be a conclusion reached. That's why we believe the speed-up provision is an important one.

[Laura Mijanovich, continued.] I would like the Legislature to consider the problem of the gag order, because it infringes on First Amendment rights of the *United States Constitution*. We haven't been allowed to talk about particular cases. We consider this gag order unconstitutional, and this is something for the Legislature to consider.

Chairman Anderson:

Do you wish us to go back and look at the *Nevada Constitution*, Article 6? Are you looking for a constitutional change?

Laura Mijanovich:

I'm saying that the gag order involved in these investigations is uncalled for.

Assemblyman Mortenson:

Were you able to express your concerns before the Senate, as you're doing here?

Laura Mijanovich:

I was not following this bill; there were other people in my organization that did. I came here to testify today. I have not talked to members of the Senate.

Assemblyman Mortenson:

The Senate didn't have the benefit of your testimony on this?

Laura Mijanovich:

Not mine.

Chairman Anderson:

Were the issues raised by someone from ACLU? You weren't there, but somebody from the ACLU was there to raise these points in front of the Senate?

Laura Mijanovich:

I believe so, but I'm not completely certain about that.

Chairman Anderson:

[Closed the hearing on S.B. 442.]

Assemblyman Mortenson:

I liked the idea of the ACLU; perhaps there should be a defense attorney on the Commission. This group has a mission, and yet the members of it are stacked against the mission, to some extent. I don't know if the Chair would accept a

motion—or perhaps the ACLU has a motion already—to add a person to that Commission. Would it be appropriate?

Chairman Anderson:

There are a couple of different issues. The President of the Nevada American Civil Liberties Union, Richard Siegel, appeared in the other House. He indicated to the Chair of the Senate Committee that the ACLU would take a position that they would work toward two years from now, relative to changes in the statute for judicial discipline. They have always been one of the key players in putting the Commission together. There are several nonattorneys on the Judicial Commission. Three people who are not members of the legal profession, appointed by the Governor, serve on that body. It could be somebody from the ACLU or from anywhere else. As long as they're not attorneys, they would be able to serve.

It's a good piece of legislation. The other Body would not accept an amendment of this nature, given the fact that the ACLU has indicated to them that they were going to work toward two years down the road.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
SENATE BILL 442.

ASSEMBLYMAN MABEY SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Horne was not present for the vote.)

Chairman Anderson:

Does anyone have a problem with S.B. 164?

Senate Bill 164: Revises provisions requiring inclusion of personal identifying information in court orders and judgments relating to parentage.
(BDR 11-1049)

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS
SENATE BILL 164.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Horne was not present for the vote.)

Senate Bill 347 (1st Reprint): Makes various changes concerning personal identifying information. (BDR 15-15)

Senator Valerie Wiener, Clark County Senatorial District No. 3:

[Senator Wiener spoke from prepared testimony, [Exhibit E](#), which is incorporated herein.]

Chairman Anderson:

You and I have been on the Attorney General's Nevada Cyber Crime Task Force since its inception and since the selection of his first executive director, who's done an excellent job in trying to put together and focus a group of people from a wide variety of agencies, who have long histories of not working well with each other. They were faced with the onslaught of a new crime, which is the fastest-growing crime in the United States and in Nevada.

A little knowledge is a dangerous thing. You and I are more paranoid about the use of our credit cards and other electronic information in this new age of the twenty-first century. It's comforting to know that law enforcement agencies in this state and nationally are stepping into this and putting aside old issues, to make sure that the public and the public identity is protected.

We need to make sure our statutes conform to the twenty-first century criminal mind, even though we seem to be stuck in the eighteenth century *Black's Law Dictionary*. Hopefully, we will be able to take one more step to stop identity theft and the people who would defraud the public, and give law enforcement another tool to ensure that our identities cannot be stolen, while not forgetting the rights of people to be secure in what they need to do. I look forward to S.B. 347.

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

We are in strong support of this piece of legislation. I know many people, including myself, who have been victims of identity theft, most recently in December. We become more paranoid when we find out what's being done to us out there by the criminals. If you want to spend a sleepless night, spend a couple of minutes with Lieutenant Steve Franks, who will be testifying. He handles our fraud detail. Every time I meet with him on an identity theft issue, I don't sleep for two or three days and I change bank accounts, because he scares the daylights out of me.

[Stan Olsen, continued.] It is stunning how easy it is to grab this information. It is floating through the air all the time. With the proper equipment, it can be captured in the air. In a matter of minutes, somebody has a whole bunch of information on individuals to take over their identity.

**Lieutenant Steve Franks, Commander, Financial/Property Crimes Bureau,
Las Vegas Metropolitan Police Department:**

I've worked in patrol, police intelligence, and narcotics. I always thought I was chasing real criminals until nine years ago, when I became responsible for the financial crime section. My detectives told me that there was a monster looming over the horizon, and that was identity theft. We proactively started a program to combat this. We've used every existing law that is available to us. Senate Bill 347 will give us a leg up.

We're addressing some valuable vulnerabilities and holes in our existing laws. For identity theft, someone just needs to know your name, date of birth, Social Security number, and your mother's maiden name. These are all too readily available through common sources.

It's not unusual for us to catch a criminal who has a computer. The one that sticks out in mind was a man who had 4,000 identities—including names, dates of birth, Social Security numbers, and mother's maiden names—on his computer. The only law that we had at that time was a law that guaranteed this man probation.

You're addressing some concerns here that, if they don't send a clear message, at least we will have a way of keeping these people out of circulation for awhile. You're addressing vulnerable persons. It takes the average victim \$6,000 and four years to clean up this victimization. The reason I'm an expert is because I've been a victim three times.

You've toughened up the penalties for public officials and public employees who leak information. The selling of information is a wholesale cottage industry now. With the advent of the Internet and cyberspace, our information can go around the world in a matter of seconds.

There will be protection for companies. It was a big thing years ago that every CEO [chief executive officer] would have a letter of introduction to his company, and he would put his signature on it. Criminals found out that they could cut and paste that signature of the CEO to that company's checks and steal thousands of dollars.

[Steve Franks, continued.] You're providing for notification of credit card holders. It's not unusual for someone to run a credit bureau check and find out that they have several credit cards in their name that they never applied for. You're addressing the breach of security, and most of all, you're protecting the electronic transfer of information.

These aren't nice bills; they're mandatory laws. We've used everything in the current *Nevada Revised Statutes* to prosecute these criminals. There was a lady I convicted 21 times before I finally got her some prison time. I asked her how much she had stolen, and she said that it was well over half a million dollars. These are necessary laws.

Alan Peters, Special Agent, Las Vegas Division, Federal Bureau of Investigation (FBI), and Representative, Nevada Cyber Crime Task Force:

I'd like to concur with the comments expressed by Senator Wiener and my colleague, Lieutenant Franks. The identity theft crime problem continues to be rampant. It has gone from a national crime problem to an international crime problem. Las Vegas and Nevada are primary subjects and victims of identity theft. Our two neighboring sister cities—Phoenix, Arizona and Riverside, California—are the two highest per capita locations for identity theft. This region of the country has a serious problem with identity theft.

The bill, as it's been proposed, has been a topic of great discussion within the Advisory Board. We've talked at length over the last several years, getting public, private, and law enforcement support and background as this bill was being drafted. We appreciate the opportunity to express our thoughts from the federal law enforcement side of the house and working hand-in-hand with the state and local partner law enforcement agencies on this bill. Some of its provisions will have a significant deterring effect on the identity theft crime problem throughout the state.

We have gone inside some very nice homes in the Las Vegas area, where the upper floor of that home was a very detailed and elaborate financial forgery laboratory with equipment that would rival the Department of Motor Vehicles. The equipment is out there to create these false IDs and is readily available to the public. At the time of several of these arrests, we had capsules full of the holograms that were placed on these false IDs. Having a bill that would have a deterring effect for the possession of such a financial laboratory is going to be a benefit to law enforcement.

The encryption issue and the notification of intrusion are going to have an instrumental deterring effect and will be a benefit to law enforcement. As the bill is presented, it allows for some flexibility to present that information to law

enforcement before notification takes place. Timeliness is critical in many of these investigations. The opportunity to work an investigation proactively will sometimes be the key to making sure that a prosecution happens.

[Alan Peters, continued.] The biometric data of a person that is included in this bill, as far as personal identifying information, is a very clear vision of the future as it relates to the numbers that we're identified by in our lives, including fingerprints, facial scan identifiers, voiceprint, and retina image. There is a vision of the future, as to what will be considered identifying information as we move forward through the twenty-first century.

As a representative of the Las Vegas Division of the FBI and the Nevada Cyber Crime Task Force, we wholeheartedly endorse the language expressed in this bill.

Chairman Anderson:

This is a giant step from where we were in 1999.

Sergeant Michelle Youngs, Public Information Officer, Washoe County Sheriff's Office; and Legislative Advocate, representing the Nevada Sheriffs' and Chiefs' Association:

We strongly support this bill. This is an economic crime that causes financial loss and emotional harm to the victims. They are complicated crimes. As technology advances, they will continue to get more complicated and harder to solve. They don't always leave tangible pieces of evidence behind and an easy trail to solve.

Tara Shepperson, Executive Director, Nevada Cyber Crime Task Force:

Mr. Chairman, I sent you a letter in support for S.B. 347 ([Exhibit F](#)), outlining some things that might not have been brought up. There's no reason for me to talk about what law enforcement is doing. They are very good at expressing the huge degree to which identity theft is a growing crime.

We've found that identity theft is not a new crime or an isolated crime; it's really theft. It is theft for a purpose. We're finding that identity theft, credit card fraud, et cetera, are tied with organized crime. It's a way to find money, often using drug users, and use that money up the chain in organized crime for other kinds of criminal activity. I don't think that anyone nationwide has a good handle on the kind of economic loss that's taking place.

We are in our infancy in developing the kind of statistics and data that we need to find out how identity theft and these kinds of frauds impact our economy. Therefore, I wholeheartedly support this bill. It is essential that we start dealing

with these issues and get a better handle on how this crime impacts our society and our state, which continues to be within the top 10 nationwide per capita. As far as Internet fraud perpetrators, where we're running first. We're seventh nationwide in terms of victims or complainants of computer-related crimes, according to the Internet Fraud Crime Report of 2004.

[Tara Shepperson, continued.] We are at the center of this. It becomes essential, as state legislators, that you deal with the issue and that we start getting a handle on identity theft.

James Jackson, Legislative Advocate, representing the Consumer Data Industry Association:

After the first redraft, we noticed an issue, which has resulted in my request to add one letter at Section 24, subsection 6, line 11, on page 13 of the bill. Add the letter "p" after the *United States Code*, Title 15, Section 1681(a) reference, so that we have the absolute accurate reference to the provision ([Exhibit G](#)).

The Consumer Data Industry Association supports this bill. We support any initiative that helps deal with and fight consumer data and identity theft. I've worked with a number of the legislators this year on a number of different bills, and as has been commented by a number of the witnesses, it's a problem that the state of Nevada needs to get their hands on. This comprehensive bill, along with some other bills that are moving through the Legislature, is taking a huge step forward in that regard.

Chairman Anderson:

Are we broadening the definition of the federal legislation by adding this single letter?

James Jackson:

No, Mr. Chairman. As I understand this technical amendment through the people in Washington D.C., it's simply going to narrow the focus of where this reference will go.

Chairman Anderson:

You're specifically looking to the Gramm-Leach-Bliley Act of 1999?

James Jackson:

No, Mr. Chairman, that is in subsection 5(b) of 15 U.S.C. 1681. I'm looking at subsection 6, dealing with when there is a breach of more than 1,000 persons; the notification has to go to the consumer data reporting agencies.

Chairman Anderson:

The net outcome would be that they don't have to notify the world.

James Jackson:

The purpose of subsection 6 of 15 U.S.C. 1681 is so that if there is a major breach of a database, consumer reporting agencies have as much advance notice as possible, so that they can begin the flagging and notification work that they're going to have to do. I was asked on Ms. Buckley's bill why 1,000 people was chosen, or 1,000 files, and it was in one of those answers—and I don't mean to sound flippant—that we felt that 500 was too few to force this sort of notification; 1,500 was too many; and 1,000 seemed about right. At that point, we're talking a relatively major breach.

Chairman Anderson:

Are you changing the cross-reference section from (a) to (p), or are you going to add the (p)?

James Jackson:

We're going to add the (p).

Chairman Anderson:

What does that cross-reference in the federal act?

James Jackson:

It's the definition of a breach.

Chairman Anderson:

It's just technical.

James Jackson:

It is, Mr. Chairman.

Chairman Anderson:

It's an insider's game question.

Dr. Dotty Merrill, Assistant Superintendent, Public Policy, Accountability and Assessment, Washoe County School District:

The District, through its legal counsel, has been working with Senator Wiener since S.B. 347 was introduced. On behalf of the Washoe County School District, we recognize that this is a fast-growing, insidious kind of epidemic, and we have seen it within our own district.

[Dotty Merrill, continued.] None of us would have anticipated transcript theft, or identity theft through the use of transcripts. There is a need to clarify the potential consequences for these kinds of actions, so we have provided two proposed, friendly amendments to Senator Wiener ([Exhibit H](#)).

One would allow the data collector to bring a civil action against any person or entity that unlawfully obtains, or benefits from obtaining, personal information, to recover damages, including punitive damages of the reasonable cost of notification, such as reasonable attorneys' fees, et cetera. We propose this in the event that the individual is not prosecuted.

The second friendly amendment in any criminal action relates to a breach of the security of the system. "The court may order a defendant who unlawfully obtained or benefited from obtaining personal information to pay restitution to the data collector for reasonable cost of the notification given, pursuant to Section 24. The reasonable cost may include labor, materials, postage, and any other costs reasonably related to giving the notification."

We discussed those amendments with Senator Wiener and with you, Mr. Chair, and we present those to the Committee for its consideration. We strongly support what is presented to you in S. B. 347, and we acknowledge the need for it.

Chairman Anderson:

When I first began teaching, everything went into a grade book. There was a hard copy of the attendance log, the day-to-day tracking of students' physical presence in your room, and whatever class activity work that had taken place. This could all be done in a small binder you kept in your classroom. That was 34 years ago. When you did your report cards, you went down to a common room about the size of this room where all the students' report cards were laid out by homeroom number. You wrote on NCR [no carbon required] paper, and then they were handed out in homeroom.

When I finished teaching last year, we were using a computer attendance system, so that parents would be notified instantaneously and telephone calls could be made to them. Attendance was taken at the beginning of class, and the central office was notified. By statutory requirement, we required minimum attendance laws, which had not been in place when I first began to teach. We tracked those students coming and going from school. The parent notification and classroom responsibility becomes important, and attendance becomes a major issue. Students could be discharged and lose credit in a class, regardless of their academic relationship, because of their attendance. It had not been the law up until that time.

[Chairman Anderson, continued.] The grade book where you set up a grading rubric is now done on the computer. When it comes time for me to do my grades, I push a button and it creates a log, or a coupon, that I give to students every two to three weeks, so they know what assignments they've missed. They can see which assignments are zeros. If you're using a percentage process, getting a zero is the end of life. You would prefer to get an F, which is 59 percent, rather than nothing. It encourages them to make sure they keep up with their work. If you were trying to be responsible with your students, you would do that.

With this new technology, individuals have been able to get into our computer systems and alter the attendance. What appeared to be a cut now turns into a medical or administrative excuse. Where there was a zero and no grade in September, all of a sudden it has a number, and the percentage changes the student's academic grade from a C or a D to a B or better.

The wonderful world of technology brings a new set of dynamics to the system, and so this piece of legislation made it seem like we could do something here. I consider it a friendly amendment, and I hope the Committee will also. It's not that the students were brighter with the use of technology than I, but they could do it so easily. The security system that I thought was solid has a few holes in it.

Dotty Merrill:

We had a student who graduated from one of our high schools in Washoe County School District and was a legitimate graduate of that high school. The student attended a yearbook signing party and got all of his classmates to sign his yearbook. Three years later, he began to use those signatures, as they had appeared in the yearbook, to obtain transcripts for his friends and then to obtain credit cards on the basis of the transcripts and information.

We required identification from him, but he had forged that as well. There are many creative and innovative ways that this information can be used in very detrimental ways.

Chairman Anderson:

Identity theft is only part of the issue that the Nevada Cyber Crime Task Force has to deal with in trying to make sure that government has the tools—even if it's the educational system—to deal with the realities of life here in the twenty-first century.

Ira Victor, President and Chief Compliance Officer, Privacy Technician, Reno, Nevada:

I am certified with the SANS [Security Auditing Network Security] Institute out of Washington D.C. I am a certified information security practitioner. I am also a member of the Board of the FBI Infraguard, which is a public-private partnership to fight cyber crime.

I have family members who have been victims of identity theft. Since I work in the industry, I deal with this issue every single day. It is a much bigger problem than most people are aware of. There is a lot of activity going on under the covers, as it were, that doesn't even see the light of day.

The private sector, fortunately, is starting to get it. This is a copy of today's *Wall Street Journal*. On the front page is an article about how personal data theft is hitting business. We have laws in the federal government—Gramm-Leach-Bliley Act of 1999, Health Insurance Portability and Accountability Act of 1996, and others—that deal with this issue.

There are civil actions today against ChoicePoint and other organizations, so these companies have to pay damages for the sloppy or inadequate security procedures and policies they had in place. We see stock prices in the newspaper, and the CEOs [chief executive officers] who are making hundreds of millions of dollars a year. If you read below the headline, a lot of it is in stock options. They are incentivized to keep their stock price up. This type of situation destroys stock prices and has done it consistently when companies have these types of problems. The private sector is getting it. The provisions of this bill that make the criminal penalties stricter are great, because they send that message.

I am concerned about a provision in the law that seems to help identity thieves. It could be a misinterpretation on my part because I am not a lawyer. Also, I am concerned with a part that seems to be absent from it.

This is a book called *Google Hacking for Penetration Testers*. This is the top-selling computer book in the world right now. I know it is in the country, but maybe even the world. It sells out. Every single computer rack I've gone to has either one copy left, or it's sold out. This is a cookbook, a how-to, on how to use the Google search engine and others to tap into public records and databases and find the very information that identity thieves need.

Not only does this book teach you how to do that, but it teaches people how to do it so that law enforcement virtually does not find them. Just like in S.B. 164, where we're not going to publish records for people that are involved in family

court actions, we're not going to publish their Social Security numbers and other confidential information. That needs to be extended into all public records.

[Ira Victor, continued.] As I read the bill, there's a provision in NRS 205.462. At the top of page 11, Section 21, subsection 3, line 5 of the bill, "The term personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records, or from widely distributed media." As I read that, it's saying, "Go out and get *Google Hacking for Penetration Testers*, read it, and you can now drive a truck through this law." This concerns me a great deal.

Senator Wiener:

This is a piece of the bill that I had some concerns with, especially with the widely distributed media. That was part of an amendment in the other House that was captured with other language. If you'll see, I've written, "Possible amendment." I talked to you, Mr. Chair, the other day about this provision, "widely distributed media," not necessarily just meaning text. Media is a big word. You and I chatted about my concern that this was included in the bill. I talked to the sponsor of this part of it, Cheryl, and I said that I'm probably looking to take that out of the bill.

Ira Victor:

That would be great.

Senator Wiener:

Mr. Chair, I would like to see that stricken from the bill.

Chairman Anderson:

Let's ask for a discussion from Ms. Lang on page 11, lines 5 through 8 of Section 21, subsection 3 of the bill, "The term does not include publicly available information that is lawfully made available to the general public through federal, state, or local government records, or from widely distributed media."

Risa Lang:

That is part of the definition of personal information as it's used in Chapter 205 of *Nevada Revised Statutes* (NRS) and in this bill. For example, where that term is used in Section 23, subsection 1 of the bill, it says, "A data collector that maintains records, which contain that type of personal information, shall implement and maintain reasonable security measures." That's for identification purposes in the sections of this bill where they're talking about the type of information that needs to be protected.

[Risa Lang, continued.] We can look at that definition to see if it needs to be tightened down. By including that, we're helping, not harming, in terms of what Mr. Victor is addressing, unless he's thinking of something different.

Chairman Anderson:

What we really need to do is read that section in conjunction with Section 23 of S.B. 347?

Risa Lang:

That's correct. Also, on the other places in this bill where it uses that term "personal information," that term is defined for these sections.

Chairman Anderson:

By cross-reference, while it's listed here, it raises the concern that it does not negate the obligation of the public agencies to keep those personal identifiers out of the record.

The wonderful Google search engine may have already gone in and pulled out pieces of identifying information. All we can do is put up the wall now, to keep those things from happening, but if they're already out there in cyberspace, there's no way that we can reach and change it.

Risa Lang:

Looking at it again, what he's saying is that the term does not include that information that's lawfully made available to the general public. When you're looking at it and reading it all together, you'd have to look at the type of information that's being protected. It may be something that we'd want to discuss with Senator Wiener, to decide whether or not that information needs to be protected.

Senator Wiener:

In one of our many meetings with Jan Needham, we struggled with this issue. Did this undo what we were trying to protect? It's been a difficult concept to grasp, but I think we need to address it. I'm not the legal expert, but I know that we've had legal minds working on it. It snuck in as I was moving the bill through the other House. A second look would help.

Chairman Anderson:

In light of the information that Mr. Victor has brought forward, I will ask Legal to take another look at this issue to see if we can clean up the language.

Ira Victor:

If someone happens upon the information in Google and doesn't do anything malicious with it, that's different. For example, I can walk by someone's car and see the keys in the ignition and the engine running, but if I step into the car, put the car in reverse, and take it for a ride, I've now crossed an important line.

We need language that says, "If you find it, we can't do anything about that," but if you take the information, store it, manipulate it, and use it, then you're taking the car out for a drive when the keys were left in the ignition. We need language that says you can't do that. I also hope that we could have language just like in S.B. 164 that says, going forward, government agencies shouldn't post this information. We recognize there's a problem, so don't leave the keys in the ignition.

Chairman Anderson:

In this Committee, and in Commerce and Labor, we've dealt with several pieces of legislation this session that have tried to deal with this. There's another committee that's meeting simultaneously that has public documents in it. That's not the jurisdiction of this Committee.

Chris MacKenzie, Legislative Advocate, representing American Express:

I propose a friendly amendment ([Exhibit I](#)) to Section 14, subsection 4, to prevent a duplication of effort required under federal law for notification by credit card issuers.

We're stating that if we comply with federal law under the Gramm-Leach-Bliley Act of 1999, 15 U.S.C. 1681, we would be in compliance with this, and the State would still have enforcement powers.

Chairman Anderson:

Mr. MacKenzie, did you note the cross-reference legislation or the amendment that was submitted by James Jackson, relative to this piece of legislation? Are you of the opinion that this issue is not already taken care of?

Chris MacKenzie:

Yes. This goes specifically to the notification that must go out when you order a credit card. It's the notice that goes out on the front end rather than after a breach. This advises the rights that cardholders will have.

Chairman Anderson:

Did you share this with Senator Wiener, and did she agree with it?

Chris MacKenzie:

Yes.

Bill Uffelman, President and CEO, Nevada Bankers Association:

I mentioned to Senator Wiener about the question that came up regarding personal information and the exclusion of the publicly available information. The reason that is there is because there is publicly available information. To the extent that I collect information and assemble it in my database—which has publicly available information—under the terms of this bill, I have to put in extra security. I end up protecting the publicly available information with a greater degree of security than it has on the front end, where it lists those things that are public.

Buffy Dreiling, Legal Counsel, Nevada Association of Realtors:

This bill accurately and adequately balances the concerns of small and medium-size businesses whose security systems may have been breached and are now required to provide notice to their customers. We support that aspect of it, but recognize that they are victims too.

Chairman Anderson:

Your concerns have already been taken care of?

Buffy Dreiling:

They are accurately and adequately addressed in this bill.

Dave McTeer, Division Chief, Information Technology Division, Department of Administration, State of Nevada:

In the absence of the Chief Information Officer, the Governor's Office has asked me to speak on behalf of S.B. 347. The Administration supports this bill from a government perspective. I have oversight over the integrated financial system. I'm also the state administrator of the Enterprise Electronic Payment System. I have a personal interest in making sure that we safeguard the personal and confidential information of State employees and constituents of various government agencies. I also work for the State Budget Director.

I'd like to point out three sections of the bill that we've had discussion about in the Executive Branch. These are not objections. Sections 19 and 21, on page 10 of the bill, deal with whether data is encrypted or not and the notification required if it's breached. The fiscal impact of this should be considered. Notification will always be required because, if data is encrypted and the database is breached, that person could also have the key to decrypt the data, and therefore, the data is compromised. The data could be decrypted as well as breached.

[Dave McTeer, continued.] Any fiscal impact should not be considered as money appropriated to individual agencies. It should be taken up with the Interim Finance Committee (IFC). Relief should be requested from the IFC Contingency Fund. There are agencies that have not had the opportunity to discuss the fiscal impact on their agency. Some of them are in the room today.

We have had discussions about the definition of "reasonable security measures" in Section 23 on page 11. If you talk to five different people, you will get five different interpretations of that and, subsequently, five different potential fiscal impacts. There's also a potential legal issue if someone were to be sued in court, and the court of law defined "reasonable security measures" differently than the agency.

In Section 27 on page 13, Administration interprets the definition of a "business," for purposes of this section only, to exclude government agencies, because this section addresses Chapter 597 of *Nevada Revised Statutes* (NRS), which deals with miscellaneous trade regulations and prohibited acts. If this is not the intent, and I have not had this discussion with Senator Wiener, then there could be additional fiscal impacts, because this section deals with encrypting transmissions of data.

Senator Wiener:

This is the first time I've heard this, so I haven't had a conversation about it.

Chairman Anderson:

I've sat with Senator Wiener and two Attorney Generals, over their tenure, in trying to develop, from the State's point of view, a protection for our citizens relative to the State's information, which it regularly collects. It started out unobtrusively with Social Security numbers as identifiers. We have taken legislative action against the Department of Motor Vehicles so that wouldn't be the identifying number. The fallout from that has caused other parts of government to become concerned, because in the prison system and in the court system, a common identifying number becomes a huge thing.

As a young man, I had the opportunity to read George Orwell's stirring discussion of 1984. It didn't happen in 1984, but that doesn't mean it won't happen in 2005. Government has information that it's potentially sharing, as we heard from Mr. Victor. The government has been collecting data for some time. We have a lot of information available to us. In the twenty-first century, with the information age, the government must start protecting the public.

Dave McTeer:

Mr. Chairman, I wholeheartedly agree with you. The Department of Administration is concerned about safeguarding this information. We want to make sure that we are interpreting these sections of the bill that I spoke about as the bill was written. If there is a fiscal impact to specific agencies, they need the opportunity to address relief for those, so they are not left with unfunded mandates.

Chairman Anderson:

We don't know what the actual cost of doing the right thing will be to the various State agencies. People who are caught up in identity theft know the impact on their personal bank accounts. I want to make sure we're doing the right thing here.

Kim Huys, Acting Chief Deputy Controller, Office of the State Controller, State of Nevada:

I wanted to follow up on Mr. McTeer's issue. We support the bill in concept, because we do everything we can currently to protect the information we receive from citizens—particularly Social Security numbers and private addresses.

In our vendor file database, we have approximately 50,000 of those types of records. We estimate it would cost us about \$50,000, if we had to provide notification of a breach.

Michael Torvinen, CPA, Administrative Services Officer IV, Director's Office, Department of Human Resources, State of Nevada:

We support the bill and the protection of information. Our Health Division has 10 million records because they're tied into federal databases. There is a fiscal impact, and we want to make the Committee aware of it. We're not begging for money; we're very concerned about security. It all depends on where the definition of "reasonable measures" land.

Our Health Division has firewalls and encryption all over the place, but we have other data systems that don't have this protection. We want to be compliant with the law.

Chairman Anderson:

I'm sure you're concerned about identity theft for vulnerable people—in particular, the senior citizen population over 60—who are often tied to this new level of technology. People over 60 utilize computers, and it is their link to the outside world, including governmental services and other programs. State agencies need to be aware of what cyber crime can do to us.

Lynn Chapman, Vice President, Nevada Eagle Forum:

We are in support of this bill and testified in the Senate. Since government requires a Social Security number of its citizens, it's government's responsibility to protect the citizens.

There was an article in the *Reno Gazette-Journal* on March 28, 2005, about Amazon.com. They have a patent on technology that will track a shopper's gift giving habits, including the recipients' age and preferences. That pulls in a lot of extra people who didn't even know they were going to be in somebody's database. They are concerned about this because it will gather children's names and ages, etc.

There was another article in the *Reno Gazette-Journal* in February about California. People are going into consumer databases and pulling out all sorts of information. There are a lot of different places, and sometimes we don't even know our information is in certain places that are being pulled and stolen.

In Section 6, page 2, when a person commits a Category B felony, the penalty is not less than 1 year, with a maximum of 20 years, and a fine of not more than \$100,000. I thought it would be interesting and very nice if we could add that they have to pay restitution to the victims—not only the data collectors, but the actual victims. It takes a long time and a lot of money to straighten all that out. The higher the penalty, the better it will be.

Credit card companies send people checks in the mail that they can spend. You never ask for them, and you don't want them. It's hard to make them stop. Also, credit card companies send information in the mail telling me that my limit has been raised. I've never asked for my limit to be raised, and I don't want it to be raised, because then I'm responsible for \$20,000 instead of \$5,000, so that's a problem as well. If there's any way that Senator Wiener can come up with something to fix that, that would be great.

Chairman Anderson:

You'll find a solution to that problem with a different Committee. That would be a commerce question. I believe there is a similar piece of legislation in Commerce and Labor that deals with credit card issues.

Janine Hansen, President, Nevada Eagle Forum:

I've served as the Privacy Chairman for the National Eagle Forum for the last 5 years. We have been very involved and concerned about this issue. We helped to promote legislation in the 71st Legislative Session and have supported Senator Wiener's legislation in the past.

[Janine Hansen, continued.] Secretary General John Hughes of the Social Security Administration has said that one of the most important things for the government to do is to work toward prevention of identity theft. This issue of public records has been brought forward today, and I'd like to mention a few of my concerns.

In Nevada, over 130 state licenses require Social Security numbers on them, including marriage licenses, which are public records. The public has access to these records, and they are not protected. Voter registration is available to the public, and many of those who registered—like I did, many years ago—have their Social Security numbers on their registration. Under HAVA [Help America Vote Act of 2002], they have the last 4 numbers of the Social Security number on those registrations. This is a good requirement, so that these records are more protected.

I was most concerned about this a couple of years ago when I applied for a hunting license. I went to Wal-Mart, and three different clerks tried to take the information. I had to put my Social Security number on the application. I was concerned about giving my private and personal information to the people working at Wal-Mart, because I felt vulnerable. I would like to see the information protected that the government requires. This year I applied for my license on the Internet, because it didn't seem as dangerous. Perhaps that was an erroneous feeling.

Secretary General Hughes speaks of a list of university student names that are being sold over the Internet. It's very important to protect the names of our university, high school, and elementary school students, which often have a Social Security number attached. It is particularly important for government to protect and prevent identity theft of these vulnerable individuals. We support this legislation.

Chairman Anderson:

There are three friendly potential amendments to Senator Wiener's bill that do not destroy its intent. Concerns were raised by Mr. Victor and the availability of the "Google Bible." We've heard from several departments of government regarding the potential fiscal impact upon their divisions.

It would be after-the-fact protection that they're looking for, rather than the preemptory dollar cost.

Senator Wiener:

The fiscal impact was raised by at least one of the witnesses who came forward today. Our Fiscal Division looked at the bill, and it went forward

without the fiscal note. I appreciate the concerns of what may happen in the future, but it's sort of similar to asking for, at this point in time, a budget for three one-hundred-year floods in the next 18 months. This is something that might be lingering out there, but it would be hard to plan a budget item for it, not knowing if will ever occur. My sense is that's what the fiscal analyst determined, because there was no fiscal note attached to this bill.

Chairman Anderson:

The big question relative to cyber crime is, according to Ms. Shepperson's testimony, that we have the highest rate of this crime per capita in the United States, and we're sixth in the nation overall. The concerns of the agencies are well-founded. [Closed the hearing on S.B. 347.]

[Adjourned the meeting at 10:42 a.m.]

RESPECTFULLY SUBMITTED:

Jane Oliver
Committee Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 3, 2005

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Meeting Agenda
<u>S.B. 331</u>	B	Randal Munn, Special Assistant Attorney General, Nevada Office of the Attorney General	Prepared testimony in support of <u>S.B. 331</u>
<u>S.B. 234</u>	C	Senator John Lee, Clark County Senatorial District No. 1	Prepared testimony introducing <u>S.B. 234</u>
<u>S.B. 234</u>	D	Senator John Lee, Clark County Senatorial District No. 1	Amendment to <u>S.B. 234</u>
<u>S.B. 347</u>	E	Senator Valerie Wiener, Clark County Senatorial District No. 3	Prepared testimony introducing <u>S.B. 347</u>
<u>S.B. 347</u>	F	Tara Shepperson, Executive Director, Cyber Crime Nevada Task Force	Letter to Chairman Anderson in support of <u>S.B. 347</u>
<u>S.B. 347</u>	G	James Jackson, Esquire, Thorndal, Armstrong, Delk, Balkenbush and Eisinger, Las Vegas, Nevada; and representing the Consumer Data Industry Association	Proposed amendment to <u>S.B. 347</u>
<u>S.B. 347</u>	H	Dotty Merrill, Assistant Superintendent, Public Policy, Accountability and Assessment, Washoe County School District	Proposed amendment to <u>S.B. 347</u> from Dotty Merrill and Anne Loring
<u>S.B. 347</u>	I	Chris MacKenzie, Allison, MacKenzie et al. Law Firm; and representing American Express, New York, New York	Proposed amendment to <u>S.B. 347</u>