MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
March 30, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:05 a.m. on Wednesday, March 30, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

GUEST LEGISLATORS PRESENT:

Bob Beers, Clark County Senatorial District No. 6

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Johnnie Lorraine Willis, Committee Secretary

OTHERS PRESENT:

Craig Mueller, Attorney
Ronald P. Dreher, Peace Officers Research Association of Nevada
Steve Driscoll, C.G.F.M., Assistant City Manager, City of Sparks
Robert D. Faiss, Attorney, Adjunct Professor, William S. Boyd School of Law, University of Nevada, Las Vegas
Louis C. Schneider, Law Student, William S. Boyd School of Law

Kathryn Holbert, Law Student, William S. Boyd School of Law
Clay R. Fitch, Chief Executive Officer, Wells Rural Electric Company
Vernon Dalton, Chairman of the Board, Wells Rural Electric Company
Renee Parker, Chief Deputy Secretary of State, Office of the Secretary of State
Kathryn A. Besser, Assistant Treasurer, Office of the State Treasurer
Patrick Foley, Senior Deputy Treasurer, Office of the State Treasurer

CHAIR AMODEI:
We will continue the hearing on Senate Bill (S.B.) 248 from yesterday.

SENATE BILL 248: Creates statutory right to jury trial in justices' courts and municipal courts for defendants charged with certain misdemeanors. (BDR 14-1122)

BOB BEERS (Clark County Senatorial District No. 6):
I would like to introduce Craig Mueller, who is an attorney from Las Vegas, whose anecdotal stories were the origin of this piece of legislation. I will let him speak and then respond to any questions.

CRAIG MUELLER (Attorney):
I am in a unique position, I started the Clark County District Attorney's Driving Under the Influence (DUI) team. I was a founding member and prosecuted there for around four years. I have been in private practice and performed DUI defense and domestic violence defense, and for all practical purposes, I am frequently the ambassador for the legal system to the citizens of the community.

This is a good bill for several reasons. The primary value of this bill is it will remove the political process from parts of the legal system. Frequently, municipal court judges and justices of the peace are elected. Elected officials, as you know, are responsive to the community by political pressure. That is why they are there, to respond to the needs of the community. The judiciary, however, needs to be independent. In these particular cases of domestic violence and DUIs, the judicial candidate regularly receives contributions from people with agendas. Those people have their own views and perspective on things. This bill would allow judges to pass to the community and its citizens the tougher DUI and domestic-violence cases.

Senate Bill 248 allows requests for a jury trial be granted with a 30-day written notice. That does not mean all cases would go to jury trial, but the tougher cases, the cases where political pressure might be brought to bear or a judge might feel political pressure, then this legislation could apply.

I want specifically to show you why I think this is a good bill.

This bill would improve the quality of law enforcement. We have in Clark County, in several of the courts, positions where retired police officers try other police officers. That is okay for traffic offenses, but it becomes a closed system for some of the other charges. There needs to be an "air brake" between what the police officer says and what gets shown to the community as a crime.

We need to improve public confidence in the legal system. An independent judiciary is absolutely essential to the rule of law. Without an independent judiciary, the decisions of those courts are in question.

I will quote a few odd cases. In each of these matters, I will not mention names, and I will avoid mentioning departments or judges. It is not my purpose to pick fights with anybody, either publicly or privately, but I want to share some things I have experienced through my office. Some of these cases are currently open or have happened in the immediate past.

MR. MUELLER:
The Legislature granted, to citizens accused of driving under the influence, the right to choose between a blood or breath test. That is an individual's right; you have granted it. The statute's language said, "if there is reasonable grounds or a breath test may be had if it is reasonably available." I noticed over the course of six months, one local department in our county did not give one breath test. I felt that was kind of odd. I know how good the breath machine is, I have had experience on both sides of it. I called the man who runs the breath-testing program for Clark County. I asked if the device worked. He said it works fine. I asked him if there was a reason it had not been used for testing in six months. He said they did not plug it in. I said excuse me. He said it has not been plugged in for six months.

I went to the judge, complained and filed a motion to suppress the blood tests because they were not performed in accordance with the statute this Legislature passed. The judge ruled, "No, that's fine," and the statute was defeated. Why? For want of a $4.57 extension cord to plug in the breath machine. That happened for six months, and that was this year. When these complaints are taken to a judge, that judge gives these kinds of answers then your statutes are defeated. They are defeated because there is no independent review of that police work.

Recently, I went to trial on a case of a Nevada Highway Patrol officer who was accused of domestic violence. The Legislature and the Nevada Supreme Court have rules on this; because the maximum penalty is not more than six months in jail, it is, technically, a minor crime. This issue was litigated all the way to the Supreme Court back in 1989. For this particular highway patrol officer, his pension, his career, his reputation, his good name and his employment were at issue. The consequence of that trial was to determine everything about this man's life. Under any traditional analysis, this man would have been entitled to a jury trial. This man and his former wife, the accuser, were going through a nasty divorce. The former wife was a police officer and knew all the right words to put into a police report. We went to trial. We tried that case in front of a retired police officer. The morning of the trial, high officials from the Nevada Highway Patrol were sitting in the back of the courtroom; there were advocates for victim's rights groups. All these people were there to put political pressure on that judge to make a decision. That is not an independent judiciary. It is not a decision that I can take to my client and say, "you got a fair shake." This is a good bill. In that case, if we had a jury, I could have bypassed all the political pressure. None of those jurors would have been receiving campaign contributions; none of those jurors would have any skin in the game. They would have been sworn under oath, and they would have an opportunity to independently review the evidence, make a decision and go home. The jury would have made a better decision with the evidence presented.

MR. MUELLER:
I would like to take this chance to rebut some of the comments made during testimony yesterday. First of all, this is not an unfunded mandate. A petit jury is six people, or perhaps nine people, if you added a couple alternates. At $25 to

$30 in witness fees, that is about a $150 per day. In comparison, that is about what most municipal courts charge for a speeding ticket. They do about 50 or 60 of those per day. Let me say this again, this is not an unfunded mandate in any meaningful sense of the word.

I have been in every courtroom in Clark County. I can go into any of those courtrooms today and hold a jury trial. There is no need for modifications of any of those courtrooms. Jury trials are held regularly in justice court for civil matters.

I talked to a couple of justices of the peace before coming here. I asked them how long it took to pick a jury in a civil case. Their response was about 15 minutes. There is no need to modify or slow down the proceedings. The petit jury could be picked every morning by the judge, and the case could be tried by the petit jury. There seems to be the impression that this was something mysterious or evil, some defense-attorney trick to try and gum up the works. But the reality is, jury trials are available on almost all serious crimes. These are all serious crimes; by definition, they should be felonies. One percent of those cases still go to trial. The value of this bill is that, in cases where political pressure can reasonably expect to be brought to bear, an attorney can ask for and receive an "air brake" between the political pressure and the facts of the case. We can impanel a jury of six people and let them listen to the evidence. Then, if my client gets convicted, I can honestly say, "Mr. Smith [or] Mr. Jones, I am sorry the community did not see it your way; they believed the police officer."

MR. MUELLER:
I had a case recently where a noncommissioned officer in the U.S. Air Force had been back from Iraq one day. He went out, had a couple of beers and was driving home. He was pulled over for speeding. The police officer asked him where he was going. He replied he was going home. The police officer asked whether he had any beer. He replied he had had a couple of beers. The police officer then asked whether he had any physical conditions. He replied. "Yes, I have flat feet. I may have to be discharged from the Air Force. I am getting an examination tomorrow; I had problems in Iraq." This was later confirmed. The police officer gave him the field sobriety test anyway; and even with the flat feet, my client passed all of the field sobriety tests. He was later arrested and is still arrested under the probable-cause standard. My client was taken down and given a breath test. The rule says the person must be watched for 15 minutes

to make sure the test is performed properly. My client was given the breath test after 7 minutes, even though the machine was not operating properly and he was convicted. My client is being generally discharged from the Air Force. His career is in ruins. His reputation is shot, and the only two other people involved in the case were a police officer and a retired police officer.

This is a case with two young men; a young police officer and a young Air Force enlisted man who got sideways with each other in the field. I could have shown jurors this was not a case of drunk driving, this was just two young men who rubbed each other the wrong way. Because one was a police officer and the other was not, one is now being discharged from the Air Force with a general discharge instead of an honorable or medical discharge. That is not justice; that is not an independent judiciary. For a small amount of money it would take to pay jury fees, we could make our legal system a lot better.

Mr. Mueller:
For domestic-violence convictions, the federal government has taken away our Second Amendment rights to own firearms. If a person has a domestic violence conviction, that person is at a disadvantage in family court. Frequently if a messy divorce is going on and one of the parties is represented by a certain group of attorneys, you can expect a domestic-violence complaint. It almost appears as if it is de facto in order to get an advantage in family court. That sort of abuse of the legal system needs to stop. We need to have an independent jury of citizens to listen to what is going on, rather than a judge who is being intimidated, has an advocacy group sitting in the courtroom or parties who gave him or her campaign contributions. We need judges to respond to public pressure, but when a person's life is on the line, we want a judge who can review the case independently. We need a small jury, which would allow a judge to say look, here it is. It is the jury's decision, not mine.

That is why this is a good bill. Other states, such as California, the republic to the west, have juries for these kinds of cases and have had for as long as anyone can remember.

We did a quick summary of the other 50 states: about one-half to two-thirds have juries for these types of cases. There is absolutely no reason we cannot have petit juries, and philosophically, there is no reason we should not.

SENATOR CARE:
I missed the first part of your testimony, but I think Senator Beers would agree with us there was no testimony yesterday about an independent judiciary; we are hearing that for the first time this morning. I do not want to get into a prolonged debate, but if that is the problem, we could appoint judges rather than elect them. That would solve the problem, would it not?

MR. MUELLER:
Philosophically, appointing judges rather than electing them might solve the problem. However, that would require a significant overhaul of our legal system. If the Committee wanted to go that far, I am not sure it could do that.

SENATOR CARE:
We do polls for the *Las Vegas Review-Journal* that cover Clark County every year, and it is true, there are some judges whose numbers are less than encouraging, but overall, I did not get the impression the problems with the numbers were all that bad. It seems to me, political pressure is the number 1 risk a person has in a democracy, and something we are going to run up against if we insist on electing judges. Would it not be better to have a jury trial for all misdemeanors? I guess your response to that would be that the political pressure is not as great for some misdemeanors as it is for others.

MR. MUELLER:
If the Committee were to see fit to amend the bill to all jury trials for misdemeanors, there is certainly no reason you could not do it.

Over the last 20 years, society has elevated these misdemeanors from run-of-the-mill misdemeanors to crimes that are more serious. Now, either through the State's actions or through federal actions, the consequences of a conviction for either misdemeanor is no longer a $300 or $500 fine and go home. That is typically what happens for other kinds of misdemeanors. These people are going to go to jail; their reputations are going to be ruined; they are going to lose their employment; they are going to suffer a loss of their Second Amendment rights through federal action. If the person is a federal employee, he or she will be fired summarily. These two particular cases are hot subjects. I would think the narrowest grounds we could craft to address the remedy would be to have limited or petit juries for both of these offenses. If the Legislature wants to go further, I certainly would not oppose it.

SENATOR CARE:
I am just engaging in a little discussion here. In civil practice, one of the reasons cases settle is because the jury is the wild card. You would have a neutral finder of fact, the judge, then when you realize you are going to have a jury trial, both sides say, "My gosh, we are not sure we want that." While you talk about the cases to which you just referred, you could have put the same evidence in front of a jury that you put in front of the judge, right? It is just a different call, and what you are saying is there might have been political pressure over here, whereas in the case of the jury, that would not have existed.

MR. MUELLER:
Sir, I frequently represent upper-middle-class or upper-class clients who get DUI arrests. I walked into a courtroom one time with a casino executive, a man who was used to getting his way in the world. He had been arrested for driving under the influence on a fairly marginal case. We walked into the courtroom, and sitting in the courtroom was a schoolteacher and 30 elementary school children and a group of Mothers Against Drunk Driving (MADD). I have a case in which my client actually passed two of the three field sobriety tests, was not driving badly and knew there was very little objective evidence against him, but the officer arrested him anyway, and now we are there for trial on a case that is within the margin of error for the machine. If we were to go to a jury trial in that case and get convicted, then I could look at that person and say, "You had a fair day in court." That is hard to imagine with a judge who has a courtroom full of schoolchildren and advocacy groups. This is not an independent judiciary. This is not a system that builds confidence in our citizens. It is not a system that leads our citizens to say, "Hey, I got a fair shake." That is the purpose of the bill, as it is drafted, for those circumstances where there needs to be a demand for a jury trial. The bill creates a system wherein a person can say, "I want independent people, with no skin in the game, to look at these facts." That is why this is a good bill, and that is why it is an important bill and why a lot of other states grant small or petit juries for these kinds of cases.

CHAIR AMODEI:
Mr. Mueller, has there been any thought to try to narrow the application to describe the circumstances, which you relayed, in the case of the law-enforcement officer, and someone on active duty? If these circumstances are present, a motion could be filed requesting a jury trial, as opposed to these general descriptions, which arguably entitle everyone to this, even if the person would not fit the description of your anecdotes.

MR. MUELLER:
I believe there are problems with equal protection; the law has to apply equally to everyone.

CHAIR AMODEI:
Was there any thought to trying to bring in judges who are on senior status to hear these which, arguably, would not be subject to the vagaries of the election process?

MR. MUELLER:
In most of the municipal courts, I am not aware of any mechanism for senior status.

CHAIR AMODEI:
I guess it would be district court judges on senior status. Was there any thought given to that?

MR. MUELLER:
No, sir, not in the general sense because there would be no mechanism to do it.

I was in a court about a week ago, in front of a judge whose primary campaign fund-raiser was with the county sheriff. There was a big picture of the two of them standing together. I had a case where the guy was not seen driving, where the car was actually broken down. There was a six-pack in the car in a cooler and the man was accused of drunk driving. Nobody had seen him, the car did not move, the car could not be moved and the man still got convicted. The man looked at me as we walked out in the hall and said, "What gives? I didn't get a fair shake." What do I say to this person?

Do you see the problem, sir?

CHAIR AMODEI:
I understand the problem. Is there any method for recusal in a justice court, can you challenge the assignment of a judge in a justice-court context?

MR. MUELLER:
No, sir, you cannot, not without showing manifest bias. I would have to go in and lay out the facts why we were challenging. In those circumstances, frequently they recuse themselves, but not always. It is the judge's discretion.

The problem is that those legal mechanisms become significantly more expensive. To do motion work, should the judge refuse to excuse himself and I have to appeal up to district court, we have doubled or tripled the legal fees for only time expended, to get the remedy we should have had in the beginning.

CHAIR AMODEI:
What if filing was automatic? What is it to file in district court, about $150 if you do not like someone on a particular case and you ask for a new judge?

MR. MUELLER:
Yes, sir. There is a mechanism in civil law, but there is no analogous procedure in criminal law. The argument against that would be forum shopping.

Some judges have tough reputations, and they immediately get bounced on everything.

CHAIR AMODEI:
Except, we are talking about a petty offense.

MR. MUELLER:
That certainly would be a mechanism by which I could move, or an advocate could move, some cases.

CHAIR AMODEI:
Of course, it is always nice to let a sitting member of the bench know you do not want him on a case when you know you will be in front of him a week later on a different case.

MR. MUELLER:
Yes, sir, unfortunately nothing exists in isolation in a small state.

CHAIR AMODEI:
Having never utilized that process in my own practice, that is, perhaps, not a great idea.

SENATOR CARE:
Going back to the Chairman's earlier question, I agree with you, you could not have a jury trial available for some DUI misdemeanors, but not others. I think we are all thinking of Clark County. Some of the testimony yesterday was from

representatives from rural counties who believe this would impose a tremendous financial burden. Maybe you have traveled around the State and have been to some of our other counties such as Lincoln County or White Pine County. I do not know what you have run into, not only could we not do that in Clark County, it would have to be uniform around the State. We cannot say that in a population of over 400,000, you may have a jury trial if you want it for DUI or domestic violence.

MR. MUELLER:
I believe the law would not allow you to set certain rights for people in certain sized counties, and the equal-protection clause would quickly get that struck down. I have make it a practice to take cases in the rural counties. I enjoy getting a break in the routine; I have been to Mineral County, Goldfield, Incline Village, Dayton Justice Court and Elko. I make it a practice to get out. I would observe that there is not a courtroom I have ever been in the State that does not have a gallery. The first row of seats on the left side could be set aside for a small jury. Even the smallest court has at least two or three rows of seating. I have never been in a courtroom that has been packed. There are also folding chairs; I do not think that folding six or eight chairs against the inside of the court rail would really pose that much of a burden on the outlying counties. I spent a lot of time in the Navy before the Cold War ended, and before I became a lawyer. I know bureaucracies are always loathe to change, and things are difficult, if not impossible, until we do them. But the reality is, I do not see any problem getting a set of Costco folding chairs and putting them against the rail. You only need to sit six or eight people for an hour or two.

SENATOR CARE:
I think the suggestion in previous testimony was that you could impanel a jury a for a domestic-violence trial, and it only took an hour or two. Then, you could have that jury hang around for a subsequent trial on the same day. Let me give you an absurd analogy that is like having a jury for Robert Blake, “Baretta,” acquit him, then stick around, and do Scott Peterson or Michael Jackson.

MR. MUELLER:
The Nevada Supreme Court and the appellate courts have said that the courts are not in a position to find a right to jury trial. But, this Legislature could certainly grant that right.

If we summon people for jury service for one trial or one day, whichever is first, the idea is to get independent judiciary. I would prefer, in many of these cases, that we have people who do not have political skin in the game. If they sit through two misdemeanor trials, one in the morning and one in the afternoon, I do not believe we are posing an undue burden on the citizenry. I worked for a judge in Baltimore City, and the city used to summon people for 30 days of jury service and hear case after case. I know of no mechanism or no reason, at law, that you could not have them hear two cases. The judge comes in at 8:15 a.m., impanels the jury and calls the first case. It settles or goes to trial. Call the second case; it settles or goes to trial. That is the way the vast majority of the cases are handled. They have to call the juries on Wednesday or Friday. I do not believe that is a burden at all, and I do not know of any reason you could not have them impaneled for two successive misdemeanors.

SENATOR CARE:
It seems to me that, again using domestic violence as the example, if you have the jury that deliberates on the first case and then it gets the second case, I would be troubled by that.

MR. MUELLER:
You are certainly free to craft it as you see fit. If you wanted to impanel a jury per case, that would be slightly more onerous because you obviously have to have a second jury sitting there and getting ready to go. But in the Clark County Courthouse, the jury panels at the foot of the escalator. There are always jurors there for district court. I am not sure justice court would have to spend any money. Send a bailiff down and round up six or eight prospective jurors who are already there for district court.

SENATOR HORSFORD:
Other than the example you used about the class in the courtroom during a proceeding, what other examples demonstrate a need for this? I am not hearing that the judges are not remaining impartial. I am not hearing any examples or any issues regarding that. I can understand your argument for the jury participation in the deliberation, but I am not hearing why we need to change our entire system.

MR. MUELLER:
Respectfully, sir, this is not a change of the entire system. Frequently, people will get their day in court, and if they think they have gotten a fair hearing and

the judge rules against them, they are satisfied they had a fair hearing. Anything that undermines that impression, any observation, any obvious political pandering or any grandstanding by the judge deeply affects that perception. An independent judiciary is a cornerstone of law.

SENATOR HORSFORD:
That is arguing for why a jury is important, but you are not saying why they are not getting fair hearings by judges. One example, with schoolchildren at a public hearing, does not constitute not having a fair hearing or the judge not following the law.

MR. MUELLER:
Fair enough, sir. I will go into specifics. I had a case in court, once again, a close call. An old-time highway patrol trooper was on the stand and said, "Your client failed the field sobriety test." I said, "Why is that, sir?" The officer said, "Well, he did not touch heel to toe." Okay, sir, how close to the heels and toes did he get. There is a book that the federal government developed, where they statistically evaluated the average citizen with the average amount of alcohol consumption would have this observable effect. Working backwards, if we observe this effect, we know what percentage of people are likely to be over the legal limit. It is a statically normal test. We went to trial, and the officer testified at length that my client failed the field sobriety test. So, I opened the book and said, "All right officer, how close does he have to be, heel to toe, for it to be scored a failure?" The officer said they have to touch. I asked him if he was sure. I showed him the book, and the book says two inches. The officer had scored the test a failure when clearly, in big letters, it was a pass. The judge turned around and said, "Oh, that does not matter, come on, he was drunk." Now that, unfortunately, is occasionally the quality of our law enforcement.

I am here to tell the Committee that there are cases out there where people are not getting a fair hearing, and we could increase the quality of our law for almost no extra effort, in accordance with what a lot of other states already do. The facilities are there; the amount of money to impanel a petit jury is not much. Then, I can say look, "I gave you my best shot, the jury did not see it your way," as opposed to "We had a crotchety judge that just wanted to go play golf that afternoon." The other remedy is frequently you get a judge who has other plans that afternoon, and they will not say this in public, but they will pull you, a young prosecutor or a young public defender, into the office and say,

"Hey, you had better cut a deal on this thing, because if you do not and I convict him, your client is going to go to jail." That sort of political pressure cannot be brought to bear when I have a jury between the vested interest of the legal system and my client's rights. The statutes are the principle; the shadow is the reality of it. To enforce these laws and to make them work, we can have increased sophistication of the law these courts are practicing. We have dramatically increased the punishment and the long-term effects, but we have not added the same fundamental rights our forefathers and fathers developed to protect us from this sort of abuse by arbitrary and capricious judges. Even the best judge has bad days.

SENATOR HORSFORD:
What is the percentage of cases you feel people are not getting a fair hearing on by a judge? Can you provide this Committee with this information? I understand there may be certain limited examples, but does that necessitate a change in the entire system?

MR. MUELLER:
Respectfully, sir, I do not believe this is a change in the entire system. This is adopting laws that are already provided for jury trials in justice court. It was litigated in 1989. The Nevada Supreme Court said, "No, if you guys are going to grant jury trials, it is the Legislature's decision, not ours."

I do not have, on a day-to-day basis, a complete statistical sample. The public defender might be a better person to ask about that. I get people who are mad enough to hire counsel because they want their say in court and they thought the officer was unfair or the officer's judgment was faulty. I do not know that I represent a full cross section of cases. I do know that I have seen cases that I, as a citizen and an officer of the court, am concerned that these individuals are not being treated fairly. It would only cost $150 to $200 to put a jury there, so I can tell my client the jury, not the elected judge, not the cop, not the retired cop, but the community found him guilty. Hopefully that man walks away believing he had a fair trial. If you go in front of an elected official who has political pressure, needs to keep his job, and is up for an election next month, those are things that impugn on my client's rights. That client, rightfully, should ask the question, was the judge worried about doing justice and being independent, or was the judge worried about his own career?

If you want to change how we elect judges or select a judges, that is a different discussion. For a little additional money, we can remove the appearance of impropriety and put a shock absorber between the worst of the abuse and the worst of the political pressure. The reality is, and I agree with Senator Care, a jury is a funny thing. It is one of the things nobody can quite control. That would do a lot to force many of these cases into settlement. Maybe we win, maybe we do not. That is the jury's decision.

The bill, as written, does not mandate, it only allows the option of a jury trial if requested in writing. If I see a tough case coming or I see a case where the judge's motives could reasonably be questioned by an outsider, we could file a demand for a jury trial. If it is a run-of-the-mill case where I have a functional defect or maybe the man is guilty and we need to get him into a detox program, we would not spend the money or the effort.

SENATOR CARE:
What lesser offenses can a person plead down to in a DUI case? I do not know whether you can plead down on a domestic-violence case. The reason I asked is I anticipate that if we were to do this, a prosecutor will say, "This means because of the burdens on our office where we would normally go to trial, we are not going to have the time do it. So, we are going to have to agree to some sort of lesser offense.

MR. MUELLER:
I have been a prosecutor. I helped put together the DUI team, and I can assure you I was as aggressive a prosecutor as there was. Facts are facts. You can scrub them, you can rub them and you can massage them, but facts are facts, and hopefully, in the end, they drive the case. By the laws as passed by the Legislature, you are not allowed to plea-bargain DUIs. The cases are filed. If the prosecutor thinks he can prove the case, he is ethically, morally and legally bound to go forward to trial. Where that line is drawn is an individual decision for each prosecutor. They go to trial every day on cases, regardless. I would submit to the Committee that the issue here is not the trial time, it is the number of courts available. Clark County could clearly use more justices of the peace. They are backlogged, and one reason is that you cannot technically or legally, plea-bargain a DUI. The reality of it is, if there are ten cases that go to

trial in one day and there is only enough trial time for one, something is going to have to happen with the other nine cases. If the case is a close-run thing, a typical compromise is to plead guilty, stay the adjudication for six months, and at the end of six months, reduce it to reckless driving.

Northern Nevada has a statute in Washoe County, operating under the influence, which implies a person may not have been drunk, but he had clearly had a little bit to drink. It is kind of a compromise thing. I am not too familiar with it; we do not use it in southern Nevada.

VICE CHAIR WASHINGTON:
We have been here for a couple of Sessions, and I remember the bill that came out dealing with domestic violence, which was actually taking the discretion away from the judges. In my conversation with Senator Beers, I became aware that some of the discretion was taken away from judges dealing with DUIs. As I went over the bill again, I was wondering if the underlying problem was the fact that you cannot plea-bargain DUIs and the fact that the discretion for a judge to make a determination, based on the evidence and the facts that were presented to him concerning a domestic violence, has handcuffed him to the point where he has to either convict, pronounce sentencing, or some type of restitution or free the defendant. If we revisit those statutes, we could give some leeway to the judges allowing an opportunity for plea bargaining, and we might be able to, not negate the jury trial, but enhance the judge's ability to make the correct decision or any decision. I know what you are saying about judges, everyone has ups and downs or something on the agenda. That is life; we all deal with it. For the most part, we have elected or appointed those judges to make correct decisions, and sometimes as Legislators, we mandate or limit them. I just want your office response on this.

MR. MUELLER:
You have asked me several questions. I am not sure a statute passed that binds the discretion of a prosecutor would, in the final analysis, pass constitutional muster. I believe the Legislature would be assuming the authority of the Executive Branch. However, the reality is no one is ever going to test that case because no prosecutor wants to be fired for doing so. The reality is the statute is there. I know when I was a young prosecutor it weighed very heavily on my mind.

Those statutes are politically popular. They were passed by the political process, the same political process that elects the judges, and that is my point.

The purpose of the jury system was to keep the king's political opponents from being punished because a king did not like them, and the wisdom of that has been upheld for a thousand years. Frequently, there are people the police department does not particularly care for and they get pulled out, questioned and charged. It is a jury, the people who have no skin in the game and no vested interest that stands between the police accusing you and you going to jail. Instead of a politically elected judge who has to worry about what everyone thinks it should be, it is a group of citizens who have no skin in the game. They live in the community. There is nothing particularly or technically difficult about intoxication or domestic violence. Everyone knows what they are. The jurors do not require a large amount of training to understand the charges. Hopefully, I would think that the wisdom of having a jury for those charges is obvious.

VICE CHAIR WASHINGTON:
Let us throw out a hypothetical question, let us say I am charged with a domestic-violence offense. My wife and I get into a little spat. A neighbor calls the police. The police come to the house; there are no physical bruises or altercation evidence, but a lot of yelling. I get arrested, booked on domestic violence. I go to court, and the judge says look, my hands are tied even though there was no physical altercation, but the statute says we have to charge you with domestic violence because you have been arrested. Then, can I appeal because I believe the statute and your decision is wrong? There were no bruises, no fisticuffs, no physical altercation, just a run-of-the-mill disagreement. If I say I want a jury trial, does the law negate me from receiving a jury trial on this domestic-violence charge?

MR. MUELLER:
Yes, sir. That very issue was litigated on almost those exact circumstances in 1989. It went all the way to the U.S. Supreme Court, in *Blanton v. North Las Vegas*, 489 U.S. 538 (1989), and judges up and down the chain ruled differently. The final decision by the Nevada Supreme Court was that if a jury trial was going to be granted for that crime, it was going to have to be the Legislature that passed the law allowing it. The judiciary was not going to define a rule itself. The judiciary ruled it would restrain itself on the right to grant trial. Jury trials, in those misdemeanor cases rested with this legislative body, not with the judiciary body.

VICE CHAIR WASHINGTON:
Based on current statute, the presumption of innocence is gone, I would actually be guilty and then would I have to prove my innocence?

MR. MUELLER:
Yes, sir.

CHAIR AMODEI:
Hypothetically speaking, it would be better if these discussions took place when we have more than 120 minutes left to finish the rest of meeting. I appreciate your attempt to do that. I believe, Senator Beers, if you could make Mr. Mueller available to Vice Chair Washington for the Socratic method to play itself out in a private context, I might even show up for part of it.

MR. MUELLER:
I would be more than happy to do so. I will be here for the rest of the day.

CHAIR AMODEI:
I appreciate that. Are there any other questions for Mr. Mueller?

RONALD P. DREHER (Peace Officers Research Association of Nevada):
Since 1997, I have attempted to get legislation as you have seen here in S.B. 248. I asked your support in looking at this from a law-enforcement standpoint. I was privy to three Reno police officers' cases who went through this process, and we attempted to get jury trials for them because of the situations in which they were involved. There is only one way out for law-enforcement officers. If they are convicted, they lose their right to carry a weapon; they lose their job. One of our officers has been gone for seven years and recently had his records sealed.

I have been in front of the Supreme Court and the State Board of Pardons Commissioners on three occasions in an effort to, at least, get the records pardoned on two of the three officers involved. There is only one way around this right now. There are two bills in the legislative works to close that gap for officers. This is a civil compromise.

Absent a jury trial, I would agree with the previous testimony that there is a lot of politics involved. I feel sorry for judges who are put in that position because they are elected every so-many years, and have to show the community they have done their job.

Domestic violence is very serious; however, in some instance when you have a he-said, she-said situation, that falls on a law enforcement officer. There is a lot of pressure to prove who is the responsible party in a domestic-violence situation.

The Lautenberg Amendment to the Gun Control Act of 1968 said if you are convicted of domestic-violence battery or domestic violence, you will lose your right to carry a weapon, and in effect, in law-enforcement you lose your job. There are no lesser charges such as disturbing the peace or anything like that. Having a jury of six or eight would assist in providing more objectivity for these people. I wanted to put that on the record.

We have tried since 1999 to get some legislation on this issue. It has been described as a political hot potato, and it is because we want to do something a little bit different. I only say this because I have seen three officers go through this. I have seen their careers ruined, and I have been in front of the Nevada Supreme Court and the State Board of Pardons Commissioners on three different occasions in an effort to do this. It is a political hot potato for the Pardons Board, for the Governor, for the Attorney General and everyone involved with the issue. This would provide a way around that. I realize the civil-compromise solution is going to be stricken this Legislative Session. I believe that is going to happen. I have seen it happen in Elko, recently, and it created a huge furor where a deputy was involved in the situation. I ask that you, at least, consider S.B. 248, this is needed and long overdue and I would appreciate your support.

Steve Driscoll, C.G.F.M. (Assistant City Manager, City of Sparks):
I wanted to add some additional information to testimony you heard yesterday as it relates to operations of the building, not to the political part, not to the legal part.

The Sparks Municipal Court was built in the 1980s. Although it includes jury boxes and jury rooms, over the last decade, with the operations of the court, and we have one of the lowest clerk-and-operational-employee-to-judge ratios in

the State; those two rooms are now full of business operations. Specifically, the one has our marshals in it, and the other has records. In order to properly have a jury commissioned, we would have to have space built and have to vacate space currently used for other business operations. That would take a lot of capital, require additional employees and require additional expenses. We do not have any system that would provide us a way to gather a jury. We would most likely have to purchase that service from the county. Our estimate for the ongoing operating cost to the Sparks court would be in excess of $200,000.

CHAIR AMODEI:
There are a couple of written testimonies on this bill to be entered into the record. Those testimonies are from Philip J. Kohn, Public Defender, Clark County (Exhibit C); and Howard Brooks, Deputy Public Defender, Clark County, on behalf of the Clark County Public Defender's Office and the Nevada Attorneys for Criminal Justice (Exhibit D).

We will close the hearing on S.B. 248 and open an informational hearing on honoring Dean Richard Morgan of the William S. Boyd School of Law.

ROBERT D. FAISS (Attorney, Adjunct Professor, William S. Boyd School of Law, University of Nevada, Las Vegas):
I am appearing in my capacity of Adjunct Professor of the William S. Boyd School of Law at University of Nevada, Las Vegas (UNLV). Under the direction of Dean Richard Morgan, I teach gaming law and policy in cooperation with Tony Cabot and teaching assistant Jennifer Roberts.

I will continue to read my written testimony, (Exhibit E).

LOUIS C. SCHNEIDER (Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas):
Thank you for allowing us the privilege of endorsing a resolution to honor Dean Morgan and our law school today. In our gaming-law classes, we have learned from Professors Bob Faiss and Tony Cabot about the leadership of the Senate Committee on Judiciary in protecting and enhancing the statutory framework of the most successful gaming-control system in the world. I will read the rest of my prepared testimony (Exhibit F).

KATHRYN HOLBERT, (Law Student, William S. Boyd School of Law, University of Nevada, Las Vegas):
Although not yet seven years old, the William S. Boyd School of Law has accomplished many great things, including record-time full accreditation from the American Bar Association, record-time membership into the Association of American Law Schools, and an unprecedented debut ranking of 82 on the *U.S. News and World Report* ranking of the top 100 law schools. I have prepared comments regarding Dean Morgan and the school (Exhibit G).

SENATOR CARE:
I commend you for what you have been through. I know what that is like; I have been through it myself and was also a parent at the time. I think Professor Faiss said you are interested in how the laws are created. With that in mind, I was wondering if you had an opinion on whether we should grant a jury trial to those charged with domestic violence or DUIs.

MR. SCHNEIDER:
Yes, sir, in fact I do. I believe the consequences of what was once a misdemeanor charge can be disastrous on an individual's life. To put your life and career at the whim of an individual does not speak well of our legal system. Our legal system was founded on being judged by your peers, and I firmly believe a jury trial is required when the result has such dire consequences.

MS. HOLBERT:
I am also in favor of the bill. I think the consequences are more severe than for other misdemeanors and warrant a jury trial.

MR. FAISS:
Thanks to the Committee for its continuing support of the program. This provides a lasting memorial, if you choose to accept the resolution from the law school for all of those who come after these students. It provides a lasting memory for all of us, for which we will be eternally grateful to the Chair and the members of the Committee.

CHAIR AMODEI:
It is the intention of the Chair to take a motion to request a bill draft for a Committee-sponsored resolution in accordance with the testimony from the witnesses today. If the Committee votes to draft that resolution, it would be heard on the Floor of the Senate on April 20, 2005.

SENATOR WIENER MOVED TO REQUEST A DRAFT FOR A COMMITTEE-SPONSORED RESOLUTION TO HONOR DEAN RICHARD MORGAN AND THE WILLIAM S. BOYD SCHOOL OF LAW FOR THE SUCCESS OF THE LAW SCHOOL AND CONTRIBUTIONS FOR THE BETTERMENT OF THE STATE.

SENATOR CARE SECONDED THE MOTION.

SENATOR WIENER:
I am curious as to how much time the students from Las Vegas spent in the library that has my father's name on it.

MS. HOLBERT:
It is a wonderful facility; we use it a lot. It is nice and is just upstairs from the classrooms, which is convenient. As a place to study, it is nice, but the books that are available there make it a wonderful learning facility.

THE MOTION CARRIED. (SENATORS McGINNESS, NOLAN, AND HORSFORD WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:
Thank you, Mr. Faiss, we look forward to seeing you on April 20, 2005. We will now open the hearing on S.B. 209.

SENATE BILL 209: Provides that unclaimed capital credit of certain nonprofit cooperative corporations is not subject to provisions of Uniform Disposition of Unclaimed Property Act. (BDR 7-839)

CLAY FITCH (Chief Executive Officer, Wells Rural Electric Company):
I am also the president of the Nevada Rural Electric Association (NREA). We have given the Committee two handouts. The NREA brochure (Exhibit H) describes rural electric cooperatives. We are a member-owned cooperative, which means the people who take electricity from us also have to be members and owners of the corporation. We operate on a nonprofit basis, and we are governed by a democratically elected board of directors. Vernon Dalton is a

director and the founder of Wells Rural Electric. To be a director, you have to be a member and live inside our service territory. Being on the board provides local control of the company and makes one responsive to the members who are served.

The other handout is a letter (Exhibit I) from our attorney. It has research on State law, national information and specific information concerning Wells Rural Electric and Mount Wheeler Power. I would like to direct you to page 2 of Exhibit I, the paragraph just below item (d). It reads, "We believe that the Nevada Statutes should be made clearer and be more precisely stated." We believe that we do not have any difficulties here, but as things change, we would like to see if we could get the language more clear and precise.

Line 7, of the bottom paragraph on that same page reads, "The reason the cooperatives provide electric service at a reasonable cost is that they do not operate for profit." The rest of the paragraph is on page 2 of Exhibit I.

At this time, there could be some confusion, but if we send a check to a member and it gets returned because the member could not be found, that would be unclaimed property. When you join Wells Rural Electric, you sign a membership card, and through our bylaws, we make every attempt to get you the money. We would rather have you get the money. It is not a dividend; it is not interest; it is not any type of investment; it is just what is left over after operating expense. If we are going to operate on a nonprofit basis, we take the total revenues, subtract the cost, add a small margin, then allocate the accounts and then return the remainder later. That is how we operate at cost. Some of those checks are returned because the member has moved and failed to give us a forwarding address. Our bylaws and membership rules basically state we will look for the person, we send a check, we send out another notice six months later, and after a year, we keep trying to contact that person for three years. As a member, people sign an agreement that after three years, the member will assign that capital credit back to the corporation. You can see there never is a time, as a corporation, that we are a holder of those funds. Either a member owns it or we own it as an association.

It is a short bill, but we would like to amend the Nevada Revised Statute (NRS) 81.540 by basically saying that the corporations affected by NRS 81.410 to NRS 81.540 are exempt from all of the provisions of NRS 120A.180 in relation to capital credits. We do not want to get into a position of asking the

Committee to look at amending the Uniform Disposition of Unclaimed Property Act; it is easier to look at our enabling act and ask for that change.

SENATOR CARE:
What are the sizes of the unclaimed-credit checks, high and low?

MR. FITCH:
Basically, it depends on the company. The two that are here today are Mt. Wheeler Power and Wells Rural Electric. We are on a 15-year rotation, which means we would hold that money for 15 years and then return it to the member. We also pay from some of our oldest and some of our newest. We have a certain retirement system to ensure almost every member gets a capital-credit check. What it shows is ownership. We try to tell the members they own the company and we operate at cost. We would like to ensure that you get a check. Right now, the average residential customer would, on an annual basis, receive about one months' electrical credit, which is between $65 and $100. Corporations could receive more and could range around $1,000.

VERNON DALTON (Chairman of the Board, Wells Rural Electric Company):
Cooperatives are created for the basic purpose of getting electrical power for those people who the regular investor-owned companies would not serve because of the sparse population. We are locally controlled. The directors live in the area and serve the people the cooperative serves. We answer their questions. We do what we say we are going to do. The board's responsibility is to keep that cooperative financially sound and legally viable. The board writes the bylaws, the rules, regulations, policies and does so under the supervision of its members. We continually talk to our members.

CHAIR AMODEI:
We will close the hearing on S.B. 209.

SENATOR McGINNESS MOVED TO DO PASS S.B. 209.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS WASHINGTON AND HORSFORD WERE ABSENT FOR THE VOTE.)

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CHAIR AMODEI:
We will open the hearing on S.B. 271.

SENATE BILL 271: Makes various changes concerning participants in program to assist victims of certain crime in maintaining confidential addresses. (BDR 16-577)

RENEE PARKER (Chief Deputy Secretary of State, Office of the Secretary of State):
We are here in support of S.B. 271, which is our bill to expand on some of the items concerning the participants in the Confidential Address Program (CAP). The Confidential Address Program was established during 1997 Legislative Session. We accepted our first participant in 1998. The way the program works is that, we grant participants the use of a fictitious mailing address. The participants are victims of domestic violence, sexual assault or stalking. Stalking is only included for those who have had a relationship with the stalker. What we want in this bill is to expand the definition to include general stalking victims.

We use certified agencies to assist victims of domestic violence and victims of sexual assault. These agencies gather the information to provide to our office to show that these individual have been victims, such as court restraining orders. We provide them with a confidential address.

We have had requests from those agencies to include some of the other victims of stalking outside a dating relationship.

The state of Washington, from which we mirrored our CAP program when we first adopted it, has also added stalking recently. There have been more and more victims of stalking.

The second part of the bill addresses the situation where school districts call us saying things such as, “I do not think this child is in my school district and I do not want him in my school. They are telling me they do not have to give their address, and we want to know what is their address.” We are not going to tell them the address if the family is a participant in the CAP program.

MS. PARKER:
The school then moves down to the part of the provision that says if a law-enforcement officer asked for a participants address, we have to provide it.

One school sent the school police into our office to request that information. Luckily, under the definition of law-enforcement officer, the school police do not qualify. We told them they had to get a court order or a law-enforcement officer who qualifies to order the release of that information.

The issue is that if we identify a child as being in that school district, we have narrowed the field of search for an abuser. We have had a situation where there were indications that the pressure behind finding out whether the child was in that school district was an attempt to narrow the field of search for the abuser to find that family. In this case, qualified law-enforcement officers were brought in, and they believed it was the abuser trying to find the family.

There are around 267 participants in the program. This program is not being abused. We accept these victims through certified agencies and ensure they are true victims in all cases. We do not want to narrow the field to a school-district area so an abuser can find the victim.

SENATOR CARE:
In a case of a victim of stalking, would it require a conviction before the victim may obtain a fictitious address?

MS. PARKER:
It probably would in this case, because stalking is defined in NRS 200.575 as: "A person who without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated ... ." The CAP program requires us to have specific evidence. It does not say what that evidence needs to be, but it does give examples: a court order, a temporary restraining order or other official document. We are not going to have someone come into our office, tell us they think they are being stalked, and receive a confidential address. That is not enough evidence. We need to have a court order or some documentation that says, "Yes, the abuser or stalker was convicted of the crime of stalking, and now the victim is eligible for a confidential address." That would be the intent in these cases; our office would require confirmation in the form of a court order.

SENATOR CARE:
Let us say you have granted the fictitious address, but the stalker still wants to stalk. What does this do? This means he goes online and tries to locate the victim. What does the stalker find if he searches public records?

MS. PARKER:
He finds a post office box (P.O. box) number that our office controls. We pick up all of the mail in that P.O. box. We forward the mail to the real address of the participant in the CAP program. If a person searches online, all they find is that address.

With the age of Google, a person may be able to find that P.O. box number, but we do not publish it. We give it to victims; they use it to enroll their children in school or for any kind of business documentation. These individuals are exempt from jury duty, which we added to the statute in 1999. They use that address for voter-registration records. Essentially, it covers all the public records, so all that can be found is that P.O. box. In the age of the Internet, whether that is successful may be in doubt. It is the best we can do. We have not had any circumstances where anyone has been found with the P.O. box, but obviously, we cannot guarantee it will not happen.

SENATOR WIENER:
Are you concerned about giving out information about a child being in a particular school district because it could narrow a search to a specific area? The bill allows the school to inquire whether or not a youth, or someone in the family, is a participant in the program. You still have concerns that giving out even that amount of information may narrow the search area for someone who is looking for that child or an adult in that child's life. Are you trying to strike a balance here to provide assistance to school districts that might be concerned, but you still have issues about narrowing it down to that child in that school district?

MS. PARKER:
The reason for that language is twofold. One is the Distributive School Account. The way it is set up, there has to be a count, the school has to be able to count and have a mechanism to count. The school has to be able to say these children are or are not counted in this school zone. So, the school district has to have a mechanism to say, "Okay, I need to know." The way we drafted the bill is that we will not narrow the field because we will not tell them. All we will say is that child is a participant of CAP. They could be in that school district, but they may not be. By making this change, it allows our office to say, "They are in CAP and we cannot tell you whether they are in your school district or not." We would not be giving out any other information to the school district, other than that they are a participant in the program. We specifically put that last sentence

in there that says, “We shall not provide any other information.” This was done so the school district cannot then try to verify the address of the child.

SENATOR WIENER:
I thought the language was saying that your office could verify that the child was in the school district. I am looking for that. It says, “... that is located in a school district other than the district where the pupil resides ... .” Okay, so they could live two school districts away. This is for the purpose of funding for a child the school does not know. They want to make sure the child belongs to their school and they cannot ask more questions, because the child is being protected.

MS. PARKER:
Correct.

CHAIR AMODEI:
Committee, are you comfortable with this bill?

SENATOR WIENER MOVED TO DO PASS S.B. 271.

SENATOR NOLAN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR WASHINGTON WAS ABSENT FOR THE VOTE.)

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CHAIR AMODEI:
We will open the hearing on S.B. 270.

SENATE BILL 270: Revises provisions governing unclaimed property. (BDR 10-581)

KATHRYN A. BESSER (Assistant Treasurer, Office of the State Treasurer):
This morning we have S.B. 270, which will change certain provisions to the unclaimed-property statute. Unclaimed property was transferred to the Office of the Treasurer in July 2001. These are changes we have tried to make to the statute to bring them up to date and make it so the Treasurer’s Office can bring in more money and find the true owners of the property. The changes

we are asking in this Senate bill change the definition of a business association to a finance organization and simply tighten the definition so that the Treasurer's Office is not accepting cashier's checks from a business association that is not required to have verified funds when issuing cashier's checks. Only financial organizations, under the definition of the statute, are allowed to do that. That is one change we are trying to make.

Another change we want, under section 3 of the bill, is to change one year to two years as the time the Treasurer's Office must hold the property before auctioning it off. The reason for that is it gives the Treasurer's Office more opportunity to find the true owner of the property. Under the current statute, which is one year, the State Treasurer's Office refunds about 40 percent of the property that comes in back to the original owners. We believe, if we are given an additional year to do this, we can increase that percentage substantially.

We also want to change the statute from saying, "The public sale must take place in whichever city affords it the best auction." We would like to change that to say "best manner" which will allow us to continue using eBay Incorporated as a way to auction this property. We held one successful eBay auction in November 2003. We sold 25 items. From those 25 items, we were able to bring in the same amount of money we brought in selling over 400 lots at a live auction prior to that. The Treasurer's Office believes using eBay brings in more money, not only to the State, but also to the property owners when they finally claim the property.

Under section 3, subsection 4, paragraph (c), we want to add a provision that would allow, in cases where the Nevada Museum or Historical Society does not want some of the property that comes in, a veterans' or military museum would have the opportunity to take that property as well as the others documented. This basically concerns military medals. There are quite a few that come in from safe-deposit boxes.

MS. BESSER:
In section 4, subsection 3, we would like to raise the limit on acquiring a bond for people who are claiming in excess of $1,000. Currently, it is at $500, and we feel $1,000 is more realistic, based on the types of money that come through. Usually, it is only cashier's checks that give us problems. Also, we have problems with stocks. In order to protect the State, it would be most prudent for the State Treasurer to require a bond.

In section 5, subsection 2, we would like to encourage new owners of property to come forward. Because of the large numbers of mergers, property seizures and acquisitions, these people are afraid to come forward and claim the items. We would like to encourage them to come forward by waiving all or part of the penalty and not be required to do so by statute.

SENATOR WIENER:
I am curious about your reference, in the early part of your testimony, about tightening things up by making them clearer by changing references from business associations to financial organizations. There are still references to business associations in section 1, line 3, also on page 3, line 22, which is under section 1, subsection 4. Why are you changing some references to financial organization and leaving some as business association?

MS. BESSER:
The reason we are doing it in section 3 is that section 3 has to do with any sum payable by a check certified by the State. In this particular instance, it has to do with money orders or cashier's checks. That is why we want to limit it, so only a financial organization can issue those two instruments.

SENATOR WIENER:
Do you want the broader references where they have been retained?

MS. BESSER:
Right.

SENATOR CARE:
I have two questions. In section 2, subsection 6, the new language says, "The Administrator may require a person reporting 15 or more items ...," who is it that reports 15 or more items? The second question I have is in sections 4 and 5. There is some discretionary language, "The Administrator may require a person with a claim in excess of $1,000" and in section 5, subsection 2, may waive "all or part" why would this apply in certain cases as opposed to others?

PATRICK FOLEY (Senior Deputy Treasurer, Office of the State Treasurer):
The 15 or more items will allow us to receive the information on diskettes. The vast majority of the reports holders send to us come in an electronic format, which uses our process of loading the property owner's information into our database system. If we can require it to be 15 or more items, it will accelerate

our loading of the owners into the system and allow us to advertise their names sooner. Currently, we are advertising, sometime in May, all of the property that comes in for the November reporting period. Being able to download these items in an electronic format and not have to key this information by hand allows us to accelerate that advertising period and get the information out to the public as soon as possible.

In regard to the $1,000-bond-issuance aspect, bonds are currently required for claims for cashier's checks people are trying to redeem and sometimes they do not have the physical cashier's check. The bond is also required if a person has stocks he is making claims on, but does not have the physical certificates. Since stocks are often negotiated as cash transactions, used as collateral for loan-type programs with financial institutions, or have been canceled for other purposes the bond is to ensure the stock is not encumbered. We are trying to have a person who is trying to claim stock certificates and/or cashier's checks, put up an indemnity bond to secure the claim back to the State, then if that stock or cashier's check should filter in through the backdoor somehow, the State will be protected from having to pay back that claim to the actual property owner.

SENATOR CARE:
I understand the idea, but I was wondering why it did not say, "must require" as opposed to "may require." Someone has to make that decision under this language.

MR. FOLEY:
In some instances, the stock certificates may have never been in the possession of the actual property owner. They may have been sent to them electronically or given to them through some type of employee savings account or something similar to that. So, the owner never had physical custody of the certificates. In those instances when the transaction is a stock redemption or some type of stock issue, we need the ability to waive the requirement of the bond, because the certificates were never issued in the first place.

CHAIR AMODEI:
What is the pleasure of the Committee regarding S.B. 270?

SENATOR CARE MOVED TO DO PASS S.B. 270.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR WASHINGTON WAS ABSENT FOR THE VOTE.)

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We are adjourning the meeting at 9:45 a.m.

RESPECTFULLY SUBMITTED:

Johnnie Lorraine Willis,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: