

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

**Seventy-Fourth Session  
February 14, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:03 a.m., on Wednesday, February 14, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chair  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Kaci Kerfeld, Committee Secretary



**OTHERS PRESENT:**

Robey Willis, Justice of the Peace, Municipal Judge, Carson City  
Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County  
Ann Price McCarthy, Attorney, Ann Price McCarthy, Ltd.  
David Kallas, Director of Governmental Affairs, Las Vegas Police  
Protective Association Metro, Inc.  
Ronald P. Dreher, Government Affairs Director, Peace Officers Research  
Association of Nevada  
Robert E. Rose, Senior Justice, Supreme Court of Nevada  
Kathy Hardcastle, Chief Judge, Eighth Judicial District Court, Clark  
County  
Wanda Lopshire, Jury Commissioner, Second Judicial District Court,  
Washoe County  
Brenda Erdoes, Legislative Counsel Bureau, Carson City  
Lawrence P. Matheis, Executive Director, Nevada State Medical  
Association  
Dr. Florence Jameson, President, Clark County Medical Association  
Bill Bradley, Nevada Trial Lawyers Association, Reno  
Lisa Foster, Foster Consulting, Reno  
Dan Musgrove, Associate Administrator, External Relations, University  
Medical Center

**Chairman Anderson:**

First of all, I want to welcome our guests from Future Farmers of America that are here observing us today. Thank you for spending your day at the Legislature and watching the legislative process. We are going to take the bills out of order. We are going to deal with Assembly Bill 17. We will take Judge Willis's questions first. Former Chief Justice Rose is present in the Committee today. I want to apologize personally on behalf of the Committee that you did not get to testify on the bills you were interested in the other day. You are here today representing the Nevada Judges Association, I presume?

**Assembly Bill 17: Allows justice courts to appoint masters in proceedings involving temporary or extended orders for protection against stalking, aggravated stalking or harassment. (BDR 15-266)**

**Robey Willis, Justice of the Peace, Municipal Judge, Carson City:**

Correct. As some of you know, Chairman Anderson was Legislator of the Year for the Judges Association at one point, and he has been a friend to the court. I am also co-chairman of the Legislative Committee representing the Nevada Judges Association and have been for many years. For those of you that are new into the Assembly, the Nevada Judges Association is comprised of

attorney and non-attorney Justices of the Peace (JP) and municipal judges within our State. Our president this year, Steven Dahl, of North Las Vegas, is an attorney and our two prior to him were attorneys; next year's president will be a non-attorney. In short, we represent all of the lower court judges in the State of Nevada.

One of the bills that our membership voted to include in our legislative package is A.B. 17. Our bill was to allow a master to hear stalking/harassing orders that are contested. Stalking/harassing order cases have become a huge burden on the justice court and are growing since their inception when this body wisely put them into effect. On the report for Judiciary for Fiscal Year (FY) 2006, there were 4,405 filings in the justice courts for stalking/harassing orders across our State. In Carson City alone, we actually had 15 more stalking/harassing cases than we had temporary protective orders (TPO) against domestic battery. We had 376 of them here in Carson City in FY 2006. In the justice court statewide, there were only 1,740 TPOs against domestic violence filed and 4,405 stalking/harassing orders. That is caused by the larger jurisdictions having family courts that have hearing masters who hear the domestic violence TPOs. All stalking/harassing orders are heard in the justice courts. TPOs are civil unless there is a violation, and then they turn criminal. Masters would not hear the violation; they would simply hear the contested stalking/harassing orders. The attorney or non-attorney language in the bill is the same as last session on our Domestic Violence Masters bill that this Body passed unanimously.

In Carson City, we have a terrific domestic violence TPO referee who some of you know—Valerie Cooney. She is an excellent judge and would probably be the one who gets loaded up if we get this passed, and she is an attorney. We also have some very good non-attorney pro tems who currently cannot hear such cases, such as Myla Florence, who was the head of the Department of Employment, Training and Rehabilitation (DETR), and the head of Welfare and Aging Services at one point in her career.

Sharon Murphy was the first female welfare director, the first female Director of Driver's License Division, number two at gaming [Chief of Administration, Division of Gaming], and retired as a Director of the Nevada Department of Personnel. She is now retired, but she is on a pro tem list. I doubt if Sharon would want to do this, but she certainly is capable. In many of our counties is Steven Dahl, our President, who called late yesterday and said to remind the Legislature that there are many rural counties that do not have attorneys, so it would be very difficult if the attorney language was put in. He is also the president of the Clark County Bar Association. These are the type of people who are not attorneys that would be chosen from.

**Chairman Anderson:**

How does this bill differ from what you are asking that we pass? Is this the same question or does it have some subtlety of difference here?

**Robey Willis:**

No, it is only the different type. That was domestic battery years ago that a master passed. It was passed out of Clark County and said "attorneys only." We wanted to get that language changed last session. As I said, it passed out of your Committee, but it did not get any further.

**Chairman Anderson:**

In Washoe and Clark Counties, the future JPs, who are newly elected and who are currently holding office as non-attorneys, are going to be able to run for a while, since it is not a retroactive piece. The township in which I live has a justice court; one of the two judges, who is not an attorney, does an excellent job. I have a long-standing belief relative to the other side of this question. The question, however, is relative to the peculiar nature of this particular area. Domestic violence and child protective orders deal with a very touchy area in our society. How would having non-attorneys affect some of those more subtle discussions that have to take place?

**Robey Willis:**

The JP has to go before the Board of Supervisors in our community for any appointments of pro tems, and also masters, so that sort of thing does get weeded out. That is why we get such good people like Myla Florence and Sharon Murphy as our pro tems. Sparks, as was stated by Chairman Anderson, has a terrific JP who is a non-attorney. However, if the limit stays the same when the 2010 census comes, she will probably be the last one. It is my understanding that the attorney judge in Sparks in the 2009 Legislature wants to get that cap raised. He thinks that the attorney judge work that she is doing as a JP is terrific and that there are others out there in the community. That will probably be brought back before you in 2009 from what we heard in our judges' meeting recently.

**Chairman Anderson:**

So if I understand, what you are advocating here is that you may find the best qualified person who may not necessarily be an attorney. In a smaller community, where there is a limited number of attorneys who are willing to practice, it may be difficult just to get an attorney and, therefore, they would have to recuse themselves from this area of practice because an attorney was not available.

**Robey Willis:**

You are absolutely right, Mr. Anderson.

**Assemblyman Carpenter:**

Would these people be able to act on all restraining orders or just certain ones?

**Robey Willis:**

No, this is just for stalking/harassing orders.

**Assemblyman Carpenter:**

So, domestic violence would not. . .

**Robey Willis:**

No. We did not have domestic violence orders in this bill at all. It is only stalking/harassing orders; the only place that these are held is in the justice court throughout the State, whether in Las Vegas or West Wendover.

**Assemblyman Carpenter:**

So, the only area they would have to be a lawyer is where they have to be lawyers at the present time, right?

**Robey Willis:**

Yes, in the larger metropolitan areas where they have family court and they also have to be lawyers.

**Assemblyman Cobb:**

I am concerned about the responsibilities that someone would have to have under a situation like this: creating a record, taking testimony, making findings of fact, and they would not be required to be attorneys to do this. I know that to run for JP you do not have to have a law degree, but you also have to stand for reelection. There is not the same type of accountability with a master who is appointed. It concerns me that the sole purpose for this individual to be handling these types of actions is to perform work that is really best handled by an attorney.

**Robey Willis:**

No, I do not. There are responsible citizens in every community who are not attorneys who could handle this. They would be sent to the Judicial College before they ever set foot into the courtroom to do this. So no, that is not true Assemblyman Cobb. There are many responsible citizens who could handle this job.

**Chairman Anderson:**

Actually, Assemblyman Cobb, it has only been in the last session that we required them to be attorneys in Washoe County, and it was less than ten years ago that we required that in Clark County. That was at the request of the Clark County delegation and was supported to a large extent. Are all of the JPs in Clark County attorneys?

**Robey Willis:**

No. In fact, in the rurals, only Lanny Waite is an attorney. I would say there are at least six or more in Mesquite, Pahrump, and Laughlin. All of those places are non-attorneys. It is just in the metropolitan area.

**Chairman Anderson:**

It is done by population of the township.

**Robey Willis:**

Exactly.

**Assemblyman Horne:**

Could you clarify how that would work? Would this justice court judge basically have a calendar for a week, or pick a particular day in which that master would come in and hear these matters? Everything would be scheduled for that day. Is that how that would work?

**Robey Willis:**

That is exactly how it would work and does work with the domestic violence master boundary. This person would have a date when he would come in and hear the contested cases, yes.

**Assemblyman Horne:**

Would it be in the courthouse?

**Robey Willis:**

Yes, it would be in the courthouse.

**Chairman Anderson:**

Are there any other questions for the Judge? Mrs. Smith-Newby, I noticed that you have indicated a desire to possibly speak on this issue. Do you want to go now, or would you like to wait until we hear those in opposition?

**Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County:**

Clark County is actually neutral on this bill, but we do have a couple of concerns that we wanted to get on the record. First of all, we have a concern

that the bill does not currently state how masters are to be paid or who would authorize the masters to be paid. Secondly, this only includes TPOs against stalking and harassment and it omits reference to TPOs against harm to minors under Chapter 33 of NRS. I understand that the harm to minors TPOs are patterned exactly after the TPOs against stalking and harassment. Thirdly, it seems to create a disparity in that referees can hear workplace TPOs from NRS 4.355, but masters would hear stalking TPOs. Those are our general concerns, although we are neutral on the bill. The fiscal impact is also difficult to determine. We assumed that it would come into play on July 1, 2007, although there is no date for when this bill would take effect. So, in the next fiscal year, we estimated the fiscal impact of \$28,723.

**Chairman Anderson:**

I am sure you are aware that when it does not state an effective date, it takes effect October 1st.

**Sabra Smith-Newby:**

I was not, but thank you for schooling me on that.

**Chairman Anderson:**

We always like to remind people that if it is not stated immediately effective or on a specific date, it will take effect on October 1st.

**Sabra Smith-Newby:**

In that case, we probably would have fiscal impact in this fiscal year.

**Chairman Anderson:**

In the face of the bill, it is not anticipated that there is a fiscal note. Generally, this is not for the State, nor was it determined the effect on local government would create a fiscal note either, and yet your supposition is based upon. . .

**Sabra Smith-Newby:**

Thank you, I can read from what our finance department put together ([Exhibit C](#)). They generally believe that this will give customers better service, but based on an expectation that JPs would use a TPO master fairly regularly. Looking at FY 06—actual expenditures from pro tem and referee invoices—the average cost of a referee was \$84 per invoice and the average cost of a pro tem was \$172 per invoice. The weekly average of referee and pro tem invoices were three and five respectively. Working from these figures, the JPs took advantage of appointing four masters per week at an estimated cost of \$128 per appointment. The estimated fiscal impact for FY 08 would be \$26,112 based on 51 weeks, allowing for Christmas and New Year's holidays.

**Chairman Anderson:**

Did you have an opportunity to share that information with the Judges Association in advance so that they know of your concerns?

**Sabra Smith-Newby:**

I did not.

**Chairman Anderson:**

Is it the county commissioners determination as to whether this is allowed to take place and approve these appointments?

**Sabra Smith-Newby:**

We would hope that it would be the county commissioners decision to decide to hire these or not, but it does not say that explicitly in the bill.

**Chairman Anderson:**

It does not necessarily mean that. We do not make it redundant of every little thing because it all has to fit together. Are you an attorney?

**Sabra Smith-Newby:**

I am not.

**Chairman Anderson:**

If you will submit those documents to our secretary, we would appreciate the information.

**Ann Price McCarthy, Attorney, Ann Price McCarthy, Ltd.:**

I have been a sole practitioner in Carson City, and over 90 percent of my cases are in the area of family law. I am here in opposition to this bill. I do not doubt the number of protective orders and orders for stalking and harassment that get issued in this State. I am absolutely positive that Judge Willis is right about that. The need for people to hear these orders is great. You probably all remember that the reason the State of Nevada started having non-attorney JPs was because there were not enough lawyers to fill those positions. That is the history of this. There may still be some very rural areas that do not have enough lawyers to fill these positions. I am not here today to tell you I do not think that exists, but I am not sure. Mesquite is only 30 minutes outside of Las Vegas. I travel to Hawthorne, Tonopah, Lyon, Churchill, Storey and Douglas; all of northern Nevada. Most of the lawyers who practice family law do that because of the need.

The State Bar of Nevada and other organizations have worked very hard to halt any expansion of the unauthorized practice of law. You are all aware that there



are still some areas in the NRS that do allow referees, masters, et cetera, who are non-lawyers. We have a huge problem in the State of Nevada with the unauthorized practice of law, and we do not want to see it expanded. I would like to point out, while Judge Willis said that the JP would hear the original order. The statute that is in front of you says otherwise: to issue, dissolve, convert, or modify the order, the statute provides that person would be appointed to do all of those things from the beginning of the case.

The young lady who spoke prior to me talked about the fact that there is no fiscal effect on the State or local government. If that is true, that means that these people who are non-attorneys will receive no training in an extremely complex area of the law that often ends up in district court. We still have only over 6,000 active practicing attorneys in this State. That is not very many for the second-fastest growing state in the United States. Again, I would like to reiterate that I am not trying to tell you that there may not be some very rural communities that still have a historical need to have a non-attorney in place.

Yesterday, I sat in on a phone conference with the executive community, which was the Executive Director of the State Bar, the President Elect, and the Vice President, and they have taken a position in opposition to this bill for the reason of the expanded unauthorized practice of law. Carson City does not need non-attorneys and the person that Judge Willis spoke of most highly, Valerie Cooney, is an attorney. She is highly skilled in this area of the law; in fact this is where she practices most of the time and has for most of her professional career. Carson City has no need for non-attorneys in those positions. I have lived in Carson City for more than 27 years and the justice court judges that we have are well trained and their hearts and minds are in the right place. I have continuously supported both of the current JPs and will continue to do so. We feel very strongly that we cannot allow the expansion of the unauthorized practice of law.

**Chairman Anderson:**

Your supposition is that the masters can issue everything; however, the way it is drafted would appear they can only take testimony and recommendations. Am I misreading this?

**Risa Lang, Committee Counsel, Legislative Counsel Bureau (LCB):**

I believe that these take the place of an action to issue a dissolve, but it says the JP may appoint a master to take testimony and recommend orders. Subsection 3 requires a master to take testimony, establish a record, and make findings in fact, conclusions of law, and recommendations.

**Chairman Anderson:**

So they are going to get to find facts and present them to the JP in that particular jurisdiction or that particular district? Am I drawing the right conclusion that they are going to take the testimony and put it together, make a conclusion, and then present it to the JP themselves? Their requirements can be greater, but they can not be less than, and they also have to be approved by the county commission.

**Risa Lang:**

I think that is correct. They would make recommendations considering the TPO.

**Ann Price McCarthy:**

I did not mean to mislead you with saying that the issuance of an order is any more vital or requires more training than anything else that gets done in that entire arena, and I apologize if I threw you off track with that. I think the entire process is very complex and requires training and an attorney to be in that position, with all respect.

**Chairman Anderson:**

I am mindful of the fact that the foremost justice in most people's minds in terms of establishing judicial precedent was a non-attorney—a distinguished justice by the name of Marshall, who read the law but was never admitted to practice anywhere. I think there are even some current members of the court or our former Chief Justice who really had never been an attorney and never been a judge before coming to the Supreme Court. Even here in Nevada, we have had a few prior to the 20th century who were non-attorneys, and, I think there were even a couple into the 1930s or 1940s. Am I missing some point here?

**Ann Price McCarthy:**

No, sir. Your history is correct, and I am respectful of all of those people you referred to. But again, that was a need-based situation, and I am simply asking this Body to respect the need of the communities and to put the best qualified people in the positions as fits the community. This should be based on the community need. If we still have some very rural communities that do not have enough practicing attorneys, and that very well may be true, then this historical situation of having non-attorneys in place may need to be there for a while longer. In those communities where there are plenty of practicing attorneys and where there would be no fiscal impact on the local government or the State, I ask you please not to expand the unauthorized practice of law.

**Assemblyman Segerblom:**

It is my understanding that right now, these hearings are conducted by the JPs?

**Ann Price McCarthy:**

Yes, in most of the rural communities that we are addressing today, they start out in justice court.

**Assemblyman Segerblom:**

My point is that if the JP is currently conducting these hearings and they are not attorneys, then I am not sure why having a non-attorney master in the same court would make it any worse or would open the door to the unauthorized practice of law. It just seems to me you are creating an obstacle that we do not need to worry about. If the real problem is the fact that JPs are not attorneys, then why can we not just change the law and make it so that JPs have to be attorneys?

**Ann Price McCarthy:**

Let me speak to Carson City because that is where I am most familiar with what is going on. We have two JPs who are trained and have gone to the Judicial College training that you heard Judge Willis refer to. These people would not have that training. The JPs in Carson City are great people and they are doing a great job. However, when they choose to retire and they are done running, we will only be supporting attorneys in those positions. I think that will be done in every community where the population and the number of active practicing attorneys allow it. I hope that answers your concern.

**Assemblyman Segerblom:**

Just to reiterate, I think that your issue is really with the JPs who are not attorneys, and I think that is something that we could do legally, and that would take care of the problem. This only allows masters who are non-attorneys in jurisdictions where the JPs are non-attorneys. If your problem is in Carson City, then let us change the law or put in here an exemption that says in Carson City they have to be lawyers. I would not mind that.

**Ann Price McCarthy:**

I am here today for this statute; I am not here on behalf of the State Bar or the Trial Lawyers Association. There is a statute that says non-attorney people may be appointed as JPs in townships of 100,000 or less. If you have a community of 100,000 people, you have the requisite number of lawyers in the community. There may be a problem with that statute, but I am here today on just this one. If you want to address the entire problem in that way, perhaps that is the way to do it. I would certainly be willing to work with this Committee and with the Chairman on looking into ways to solve a bigger problem, so that you are not constantly hearing the smaller problems.

**Assemblyman Carpenter:**

I think the people in those communities need some of the say. You said you are going to put attorneys into those positions in Carson City, and maybe someone else who is not an attorney but that the people elect. The people need some choice in these matters. You call it an unauthorized practice of law, but I do not see it like that. If we would take that to a conclusion, then all of those non-attorneys who are JPs would be in the unauthorized practice of law. The most important thing is that they be trained. I do not have any problem adding to this legislation that they have to go to the Judicial College and get training. There are great non-attorney JPs out there who are going to be elected by the people as long as they want to. I have a problem saying that because you are an attorney or not an attorney you can do a better job as a JP. In reality, our Attorney General does not have to be an attorney.

**Ann Price McCarthy:**

I understand your concern, and I believe the Chairman's concerns are exactly that. Anyone who wants to run for JP in this State has to be elected. Because I am an attorney, and because Nevada is my home and this is my community, I feel strongly that the training I had and who I am makes me more qualified to interpret statutes, understand the case law, and apply it fairly to all of the members of my community that appear before me. I do not want to be at odds with anyone on this Committee in trying to tell you that attorneys are better than all other people. I am not going to say that. I am simply going to say that you need the right person for the right job. Historically, we had non-lawyers in those positions because there were not enough lawyers, not because lawyers are not nice people or other people are better people. Because of that technical reason, lawyers are trained to be caring people in this very complex area of the law.

**Assemblywoman Allen:**

You mentioned earlier that you are representing yourself. Does the Nevada Bar Association have a formal position on this bill?

**Ann Price McCarthy:**

I am here today on behalf of the Nevada Trial Lawyers Association. The State Bar has taken a formal position in opposition of this bill, and I expected their representative to be here this morning.

**Assemblyman Ohrenschall:**

Should it not be a matter for another bill whether all JPs should be attorneys? It is a concern to me that more and more matters are being adjudicated by persons who are not elected, and did not have to stand before the voters.

Would it be a matter for a separate bill if we want to raise the bar to be a JP in all of the counties?

**Ann Price McCarthy:**

Perhaps. I am not an Assemblywoman or a Senator for this State. I am someone who cares deeply about the laws of the State, especially when they affect family law. I have lobbied the Legislature on behalf of these issues as a non-paid lobbyist for more sessions than I can remember. I will help you do anything you want regarding these statutes with the assistance of the LCB. I am not here to say that every single municipality and county in this State must elect attorneys in those positions. I am not sure of that and I do not have all of the statistics. There may be some rural communities who do not have enough lawyers to assist the people in anything, let alone be JPs. The need is great. I am not arguing with Judge Willis about that.

**Assemblyman Ohrenschall:**

My concern is that more and more matters are being heard by persons who were not elected.

**Chairman Anderson:**

Let me draw your attention to page 2, subsection 2, lines 3 and 4 of the bill: "The master must possess qualifications that are equal to or greater than the qualifications required of the justice of the peace." That means that if the JP in that particular township is required to be an attorney, then the master would also be required to be an attorney. If in that particular township, there is no such requirement, then that is because of the unique nature of that particular township and the need of the court. With permission of the county commission of that county, a master may be appointed because they meet the same qualifications. It does not preclude an attorney, it just says that they can pick and meet the qualifications. There is no danger that is being created here to broaden beyond the scope of what is already in place by township. That was a long, hard-fought question that the Bar Association promulgated, since the qualifier is there. So, what you are asking us to do is broaden the scope to limit the ability of those counties that do not currently have that statute or ability. It takes an opportunity away from counties when the Legislature says they have the right to be a non-attorney. Am I drawing the wrong conclusion here?

**Ann Price McCarthy:**

No, you are correct. This simply extends to those counties for which there are allowed, elected JPs who are non-attorneys, to appoint non-attorneys to handle this area of the law.

**Chairman Anderson:**

We are not giving non-attorneys the opportunity to become masters in townships that currently do not allow that to take place. We are not broadening the scope to somebody who is not currently there.

**Ann Price McCarthy:**

You are correct. These people, however, will not receive any training.

**Chairman Anderson:**

Thank you very much. Is there anyone else wishing to testify on A.B. 17? I would like to ask Mrs. Smith-Newby to make sure that her remarks and documentation that was presented is put into the record. Let us close the hearing on A.B. 17 and turn our attention to A.B. 49.

**Assembly Bill 49: Exempts certain persons from jury service. (BDR 1-145)**

**David Kallas, Director of Governmental Affairs, Las Vegas Protective Police Association Metro, Inc.:**

You should have in front of you two exhibits that I have given ([Exhibit D](#)) and ([Exhibit E](#)). I believe that about half of the members of the Committee were here in 2003 when this bill was originally written and heard. I would ask that those Committee members who were here at that time bear with me while I give a little history regarding the bill and the reasons for our support of it.

**Chairman Anderson:**

You are walking very closely to a violation of *Mason's Manual of Parliamentary Procedure*. It is one of those tiny questions, and I do not anticipate that you would know of it. The difficulty is dealing with an exhibit that was presented at an earlier Legislative hearing, or a document that is getting consideration in another Committee or even in the other House. I want you to be very careful in your discussion in utilizing the amendment. One Legislative body cannot be bound or in any way precluded from moving on the information presented to it. We are not bound by actions of a previous Legislative Body, actions that are taking place in another committee or in another House, or even to another bill in front of this Committee.

**David Kallas:**

I certainly will defer to you if I am getting even close to that line.

I am here today in support of A.B. 49. In 2003, the Legislature implemented revisions to NRS 6.020, in which it removed all exemptions from jury duty that were currently included, with the exception of the Legislature and Legislative employees while the Legislature is in session. I need to give credit to the

members of the Jury Improvement Commission, who submitted a 91-page document in October 2002, which was submitted to the Legislature during their discussions in 2003. There is no doubt that a tremendous amount of work and effort went into trying to find ways to make the jury system in this State more effective for all participants—the jurors, defendants, judges, and everyone who participated. It had a significant impact on the elimination of the exemptions.

I realize that part of the rationale in the Jury Improvement Commission report was there were 25 other states, including the District of Columbia, that had eliminated all the exemptions or exclusions for jury duty. Contained in the Commission report, were references to different individuals, such as Rudy Giuliani and Dan Rather, who had actually participated on juries. I do not disagree that has occurred. But what was missing from that report, which supports this bill, was where Commissioner Kathleen O'Toole from the Boston Police Department, former Sheriff John Moran, and former Chief of Police in Henderson, Michael Mayberry, were included in examples of people who were previously excluded from jury duty who are now included.

I understand that the purpose of the Jury Improvement Commission was to try and find ways to improve the jury system. I understand that sometimes when we implement new legislation, we do not always understand and cannot always see the practical applications or the unintended consequences.

I have been a police officer in southern Nevada for almost 28 years now, and never once in those 28 years has a police officer been picked to participate in a criminal jury pool. That is the basis of our support of this bill. We believe that we have the civic responsibility to participate in the judicial system as jurors. We certainly do not want to take away from that. If there were any opportunity for us to participate as a juror, we would do so willingly. The way the system is set up right now is neither practical nor effective for us to do that. Over the course of the last several months, we received emails from many of the officers that we represent explaining to us what they had experienced when they were summoned for jury duty. None of the emails we received from those individuals said they did anything other than sit around in a jury room—or eventually get into a court room—and then the jury box, for a one-to-two day period, only to be excluded by a preemptory challenge by a defense attorney for no other reason than their occupation.

As you may hear from opponents of this bill, it is every individual's right to serve on a jury, and they should not be excluded based on race, religion, or profession. I am here to tell you today that, unfortunately, because of our profession as law enforcement officers in this State, we are almost always excluded from serving on a criminal jury. I realize the other side of the coin,

which is the civil process. Unfortunately, that shows the effectiveness and the ineffectiveness of the way the system is set up. There is no system I am aware of in Clark County where you are summoned to jury duty based on your occupation; you are automatically put into a criminal or civil pool.

I can base this on my own experience. Last year, I was summoned to jury duty. The first day I went, I spent about four hours filling out forms. When the forms asked about my occupation and how long I had been there, I do not think I could have written it in any bigger or bolder letters. I was hoping that eventually when someone read it they would exclude me—not because I did not want to serve on the jury, but because it was my firm belief that, based on my occupation, I was going to be excluded. I was called back two weeks later and showed up in the early afternoon. I spent the next four and a half hours in the jury room, and eventually, in the court room. I made it to the jury box, and after six challenges I was finally excluded from that jury.

I realize when people talk about preemptory challenges and the concerns about the defense, they believe that a judge would be able to look at individuals and their occupations, and based on questions, they would exclude those people. The first question I was asked while in the jury box was, "Do you know anyone in the courtroom, and under what circumstances?" It was my responsibility to tell them I knew the judge and had many contacts with him over the last 26 or 27 years. I had participated in prosecution cases with both of the deputy district attorneys who were sitting in the room. I was asked kindly to take my seat in the jury box and give the defense attorney the opportunity to challenge me.

If you look at the bill, you will see that judges, attorneys, and corrections officers are included. When we talked about preemptory challenges, we talked about how the knife cut both ways. If you had somebody who was a public defender or a defense attorney and they ended up in the jury box, it would be the right and obligation of the deputy district attorney or city attorney to use their preemptory challenges to remove them. From our perspective, that is practical and more effective because they are going to be excluded based on a preemptory challenge by the Deputy District Attorney or City Attorney. Our public is better served by having those people available in their chosen professions, in which they do serve a great public need.

This past weekend, some of you may have read in Las Vegas's version of the *National Enquirer*, an opinion in the editorial section about the attempts for these special interest groups to try to avert their responsibilities to serve on juries. I would certainly dispute that. That is not what we are trying to do. We are here to say that we want to serve as much as we can, but if you are going



to put us in a position where we are not going to be able to succeed, then why not reevaluate that and look at the practical aspects.

**Chairman Anderson:**

Mr. Conklin, I apologize. Had I flipped open my bill book instead of looking at my agenda, I would have noted that you are the primary sponsor. As a prefiled bill, you get to walk out there in the ring by yourself. I apologize for not giving you the opportunity to introduce the witnesses in the order in which you wanted to hear them. Assemblyman Conklin, if you want to make a statement for the record, I would appreciate it, and please accept my apology.

**Assemblyman Conklin:**

Thank you, but an apology is not necessary. I represent Clark County, Assembly District 37. Mr. Kallas has adequately represented the reasons why I believe this bill is necessary. I am not an attorney, and philosophically I do agree with the fact that our jury pools are an obligation of every citizen to participate in. I certainly am not seeking to limit that by any stretch of the means. However, there are some practical applications. Every year since I can remember, we have debated the budgets and the limited resources that this State has. Last session, we took up the issue of more money for police officers.

It is always an issue to my constituents why the time to respond to certain crimes is so large. The fact of the matter is this: every time that we take a police officer off of our streets and send them to jury duty and they get denied, we have taken an officer off the streets for at least one day, if not several. We have paid him, so the taxpayer is still spending the money towards a process for which they do not offer any value since they get rejected and sent back. I do not think that is a prudent use of our resources and of the time of our police officers. I think they are better served to be able to step out of that and serve the public, to be on the streets and protect our homes and our families, and to do good work for the people. To me, that was really the overriding issue. Mr. Kallas adequately represented the other groups in his statement.

**Chairman Anderson:**

Thank you for reraising the issue. It is always nice to see old friends back here again, and this issue is one that we have dealt with before. I have people who have indicated the desire to talk. Anyone who wants to direct their question specifically to Mr. Conklin? These are questions directed to Mr. Conklin as to his intent, not to the bill itself.

**Assemblyman Cobb:**

I have a question about a specific part of the bill. Is that better suited for someone else?

**Chairman Anderson:**

That is probably more directed toward Mr. Kallas.

**Assemblyman Cobb:**

Would you like me to hold my question then?

**Chairman Anderson:**

Yes, if it is specifically to that. These should be questions for Assemblyman Conklin on what he brought forth and why he brought it forth.

**Assemblyman Segerblom:**

Does this bill include more than just police officers?

**Chairman Anderson:**

Let me make sure I understand the intent of this bill. The reason that you make the cross-reference to the 2003 statute is because we are going to be returning to reinstate the certain exemptions from jury service to various Dayton County officials, and we are expanding it to the Department of Corrections in the list. Is that the intent of what is happening here?

**David Kallas:**

I believe the previous statute did include the Department of Corrections. The premise for the existing bill and the different entities that are named on it is based on the exemptions that were included in NRS 6.020 prior to 2003 and also in statements made by some of the proponents of what was Senate Bill No. 73 of the 72nd Session about how the knife cuts both ways. That stated that the deputy district attorneys and city attorneys would be using preemptory challenges against somebody who may be a public defender or a criminal defense attorney selected to serve in a jury pool, and therefore, would not have those preemptory challenges available. It is almost like we are going to waste them on the deputy district attorneys and the city attorneys, as well as the public defenders. The officers then end up at the same place we were before, that we are going to be excluded from the jury.

**Chairman Anderson:**

In point of fact, it is the way it was originally written, except for trained engineers, conductors, brakemen, and all those other family members of mine.

**David Kallas:**

I realize you made that statement, and that goes to the bigger worry about the effect and the tendency of consequences of some of the changes.

**Chairman Anderson:**

There is a lot that everybody can, in fact, correct. You feel that these folks, because of their relationship to the justice system, are directly affected.

**David Kallas:**

We believe that, from either the defense side or the prosecution side, they will be excluded from a criminal procedure.

**Chairman Anderson:**

Let me start with the questions then.

**Assemblyman Cobb:**

Is there a legal definition of what a federal or state officer is?

**David Kallas:**

There is, but I could not tell you it. A state officer could be somebody with Nevada Highway Patrol, Nevada Division of Investigation, et cetera. Certainly a Nevada Highway Patrolman would be an officer, maybe a peace officer, but not a police officer, so we are trying to include those people in law enforcement—federal officers, people from the FBI, Secret Service, Alcohol and Tobacco, Firearms, et cetera.

**Chairman Anderson:**

Also game wardens, Fish and Game, national parks workers, et cetera.

**David Kallas:**

I would certainly defer to you on that.

**Chairman Anderson:**

There is a history in Nevada, earlier than 2003, which included this language; it was "those who were anticipated."

**Assemblyman Cobb:**

I was going to request that legal counsel provide us with any type of definition that would be in the NRS or in any type of common law that would give us a better definition of what a federal or state officer is.

**Chairman Anderson:**

Let me take that under advisement. I do not want to take legal staff away from drafting bills at this particular point in time. I am a little sensitive on the issue, as I am sure you are, about trying to get their primary response.

**Assemblyman Segerblom:**

It sounds like the issue is with criminal juries. Have you considered limiting this to criminal juries? Also, with respect to judges, JPs, or attorneys, I am not sure they would have a problem being on a criminal jury, either.

**Assemblyman Conklin:**

It is my understanding, that when you are selected to be a jury member, you are not told whether it is civil or criminal jury. So, you may wind up going and not being selected, going another day and not being selected, and going a third day and possibly selected for a civil case; however, there might be some statistics that suggest that even in civil cases, this is not a highly selected group.

**Assemblyman Segerblom:**

So, if the court system could differentiate between civil and criminal, you would be willing to make that differentiation in the change?

**Assemblyman Conklin:**

If you could show me that this is a body that would be allowed to participate at least some of the time, I think that would be worth it. I think this group, even in civil cases, is not a group that gets selected for the jury pool. If this is not a group that gets selected for the jury pool, should they be spending time away from the job they get paid to do, which protects us in a different way?

**Assemblyman Segerblom:**

Do you have any information as to whether police officers are routinely rejected from civil juries?

**David Kallas:**

I do not. There is nothing to say they would not be allowed to serve on a civil jury, but as was stated earlier, there is no process in place that distinguishes between civil and criminal jury. If there does come a point in time where that happens, we would certainly love to exercise our right to serve on a jury. At this time, it is just not practical or effective for the tax-paying public to have us sit in a room for three days when we could be out protecting them.

**Assemblywoman Gerhardt:**

I need to make a disclosure that I am a retired corrections officer. I retired after eight years with the Las Vegas Metropolitan Police Department. This bill does

not affect me any differently than anyone else, as I am retired. I would like to add one anecdotal note: I was called several times during my tenure to serve on juries, and I, too, was excluded, although I would have loved to participate.

**Assemblyman Horne:**

I am not sure if the jury commissioners know whether they are sending their jurors to a criminal trial or civil trial. You are absolutely right, Mr. Kallas, I cannot imagine a situation where I would want a police officer on the jury. I cannot imagine it happening. However, last year while preparing for trial, we sat ready for the jury pool to come in, and they did not have enough jurors. The commissioner told us that was the first time that had ever happened. We had to continue the trial because there were no jurors available to even pick from. I would like more information on whether or not the jury commissioner does or does not have a method of knowing where they are sending these jurors. If they do not, then I agree it is a waste of resources to have police officers in the jury pool. I do not know of any criminal defense attorneys who would pick them if they were on a criminal case.

**Chairman Anderson:**

Is there anyone else testifying in support?

**Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:**

In my 26 years of working as a Reno police officer in the Major Crimes Unit, I have been called for jury duty three times. In those three times, two times were criminal and one time was civil. I echo the same comments as Mr. Kallas and Assemblyman Conklin. It is a considerable waste of time for us. However, I do not mind serving on a jury, either. I can tell you, on behalf of the police officers of this State, that you usually get called to jury duty when you are working graveyard; it is never when you are on a day shift. Unfortunately, that is the way it works. When you go and sit there for the whole day, you are very tired, and the only way you get to go home is if you take sick or vacation leave so you do not go to work tired, which presents itself as an officer safety concern. I, for one, will tell you that every police officer or peace officer I know of would love nothing better than to serve on a jury. The point is that, in reality, it just does not happen. Challenges are made, and we are gone. I speak in support of this bill for that reason, and for only that reason. As a retiree, I would not mind serving, but I would assume, even now, that I would be challenged off the jury. Thank you.

**Chairman Anderson:**

Is there anyone else speaking in favor of the legislation who wants to get on the record? [There were none.] Let me turn our attention then to those in opposition.

**Robert E. Rose, Senior Justice, Nevada Supreme Court:**

While I was a Justice, I co-chaired the Jury Improvement Commission. It was a study to see if we could improve our jury process, so that trials could be held quicker to make life a little bit easier for the jurors, to make the results more reliable and jurors more effective in their work. This was part of a national trend to reexamine the jury system and try to improve it. One of the things we looked at were the exemptions before 2003, and Nevada had a laundry list of them. You saw most of our best and brightest people exempt from jury duty. Jury duty was then left to the unemployed and the people who could not avoid it. You very seldom had any professional or highly trained people serving on our juries. The reason we voted unanimously on this policy was that we wanted to have everybody participate in this democratic process. When you go to a district court, it is very important and is quite often your life, your freedom, or your money at stake. We thought that we should have all people participating in that process. Democracy should not be for some; it should be for everyone. That was the thinking behind the recommendations to increase a juror's pay and to eliminate all exemptions, except for legislators and legislative employees during session. We went from being one of the states with the longest list of exemptions to being in-line with the majority of states, as Mr. Kallas has stated, 25 or 26 now.

Everybody serves: Physicians serve. Lawyers serve. I was called two years ago to serve on a civil case. I went and the case settled right before me. But Jennifer Togliatti, from Clark County, was also called and served to conclusion a few years ago on a civil case. So we do serve. I would be the first to agree with Mr. Kallas and the other people who have testified that, on most of your criminal cases, your police officers will be excused for cause or will be preempted. Most of the time, they will not serve, but sometimes they do. I had a death penalty case where a corrections officer was permitted to serve to verdict on the case. I can remember one other case where a police officer did serve. Generally speaking, on a criminal case, the police officer will not be permitted to serve. However, the other half of the cases that we have are civil cases. As a trial attorney, I would love to see a police officer, former police officer, or a corrections officer come forward and be in that pool. By training, they are good jurors. Their observations are good and their thought processes and investigative skills are better than most. They can relate well to incidents and transactions that happen. When I was trying cases, and even as a trial

judge on civil cases, I wanted police officers and corrections officers because they are good.

It has been mentioned that the process goes on for two or three days. I do not know if that is now the case, because I am not in the trial court level, but I know Washoe County and Clark County can tell you this: there is one day, one trial policy. If you are not selected on a trial the first day you go out, you are not usually brought back for a second day. So you either get on a trial the first day, or you are let go that day. That rule is pretty uniformly followed. So, the fundamental question is whether we should exempt anyone. You answered very affirmatively in 2003 that we are not going to exempt anybody and that this is part of your responsibility as a citizen. I have had physicians, lawyers, and judges call me, and I have said no because there are no exemptions in Nevada law. Maybe accommodations could be made to police officers in criminal cases. You do have random requirements that might run afoul of that. You could have some processes where you could quickly identify your police officers, call them first to see if you are going to have any problems or peremptories with them, then you can move them along as quickly as possible. I can testify to the specific policies, but I can also tell you that, when it comes to jury trials in district court, where we deal with the most fundamental of issues—a person's money or a person's freedom—everybody in Nevada participates. If we do this, we are going to have the teachers and the physicians here next session because they want exemptions. Then the college professors will be back, and then the locomotive engineers will want exemptions, and then Assemblyman Carpenter will have a bill for ranchers, and before we know it, we will be back where we started. I would simply say, do not start the process. Let us try to better accommodate police officers who are called in criminal cases.

**Chairman Anderson:**

I believe locomotive engineers, brakemen, and firemen are there because of someone who served here long before me and had a great deal of influence in another committee room next door. Are there any questions for Justice Rose? [There were none.]

**Kathy Hardcastle, Chief Judge of Eighth Judicial District Court, Clark County:**

The Eighth Judicial District Court and the Second Judicial District Court have voted to take a position opposing this bill for many of the reasons stated by Justice Rose. We also want to specifically note that Judges are included in this bill. We did not ask to be included, and we do not feel a need to be included in this bill. We oppose the bill in its entirety. As Justice Rose said, some officers are probably not going to be selected in criminal cases, but criminal cases are only half of what we do. We also have our civil cases, our short trials, and our

grand jury. On more than one occasion, we have had police officers and other peace officers selected to serve on the grand jury. I do not need to elaborate upon any other considerations since they were covered by Justice Rose.

**Wanda Lopshire, Jury Commissioner, Second Judicial District Court, Washoe County:**

Justice Rose has very eloquently stated my feelings and the feelings of the Second Judicial District Court, as has Judge Hardcastle. I am not just an administrator of my office, I am a working member and I handle phone calls from jurors daily. I would like to speak to the practicalities and the basic principle.

I understand, from a personal standpoint, the importance of having our officers on the street. But, as a mother, I also understand the importance of having a teacher in the classroom, and they are not exempt. The list of people who wish to not serve is endless, and I deal with those phone calls daily. My job is immeasurably easier now that I am able to say that everybody serves. Everyone has the right to serve and the right to a trial by jury given to us by the *Nevada Constitution* and the *United States Constitution*. In order to have a good cross section of the population, we are best served by not having any occupational exemptions. We have doctors serving, and it was my feeling they would be the largest nay sayers. I am so proud to say that the doctors of Washoe County come in and serve, and they serve happily. I do not mean just appearing—I mean serving. Our own Judge Berry has appeared for jury service, and we have a retired sheriff's deputy on our grand jury right now. Just based on the principle, I am opposed to this bill.

**Chairman Anderson:**

The Jury Commissioner in Washoe County does a really great job. We applaud your office for its thoroughness and hope that the other counties are as well served as we are in Washoe County.

**Assemblyman Horne:**

The important difference to note from your teacher analogy is that classrooms do not go without teachers. There is a substitute teacher that is brought in for that time. A police officer is not always replaced on the street. Say, for instance, a two-man vehicle: One police officer is called into jury duty, and now it is a one-man vehicle for that period of time. They are not always replaced. That is one difference that concerns me. Could you speak on the issue of whether or not jury commissions have a way to separate our civil trials, and if that is practical or not practical to do?



**Wanda Lopshire:**

I realize that there are substitute teachers, but ask the teacher who is teaching special education or the teacher who has new students and school has just started. They feel their job is just as important. Those students are important to them, just as much as a police officer on the street. We also have nurses and doctors who are leaving practices at great expense. I will speak to the practicalities of placing an officer only on a civil case.

As Justice Rose stated, we have a random process. Names go into a pool. It would be difficult to place an officer strictly on a civil case. It is doable but it would mean the officer would have to be placed at random the very first time, and simply make a phone call. We could then postpone them like we do the general jury pool population. We work with each and every juror, and we certainly could work with that police officer. By tracking the calendar, we could place that officer on a civil case, but it is not something that I am for. I believe in the randomness of our system. We assign people by number, and then by group number, in which we form a panel. That is not something I am comfortable with, but it could be done in Washoe County. Clark County is much larger, and they actually have a jury pool, whereas we preassign our jurors to cases because we are very small.

**Assemblyman Horne:**

Is it doable to funnel these law enforcement officers into only civil trials?

**Wanda Lopshire:**

Yes, it is doable in Washoe County and I believe in Clark County, even though we do our systems differently. Clark County does a pool system where they gather whatever needed jurors—35-45 jurors is the average panel. I believe they could place that officer on a civil case, and, yes, I could do it in Washoe County. It is not something I am totally comfortable with. The jury system is based on the random act.

**Assemblyman Horne:**

I understand that, but as a possible compromise, they would still be doing their civic duty as we would like all of our citizens to do. However, they would not necessarily be wasting their time in a criminal track because, frankly, I do not know any times that they would be picked. It takes nearly all day to pick a jury at your trial. I was just wondering if it was possible, and it seems like it may be. It may be something just to discuss and debate.

**Wanda Lopshire:**

The average jury selection in Washoe County is one to three hours. We do not keep people unnecessarily from their job, whatever it may be. Our judges feel

very strongly about getting people back to their jobs and we do everything we can to shorten that time. Also, we are a one-day, one-trial system. If you are not selected in one day or for one trial, then you are released.

**Assemblyman Ohrenschall:**

Since the Rose Commission Recommendations were implemented in 2003, do we have any statistical data that might confirm whether Nevada juries now have more diversity or have a better cross section? Have the Rose Commission Recommendations actually achieved their goal by the exemptions being gone?

**Wanda Lopshire:**

No, we do not track that demographic.

**Assemblyman Ohrenschall:**

Does the State Bar or the Supreme Court collect data on whether the juries are more diverse, or whether the recommendations actually achieved their goal?

**Wanda Lopshire:**

No, we do not track those statistics in my office; I cannot speak for Clark County.

**Chairman Anderson:**

I might mention, Assemblyman Ohrenschall, that generally speaking, the Administrative Office of the Court has only been gathering statistical information based upon questions that we have asked them from the Legislative Branch. We asked them to begin gathering statistical data in 1997 or 1999, I believe, based upon the need to verify other kinds of jury questions.

**Assemblywoman Gerhardt:**

I would like to address another section of the bill. In section 1, subsection 2, it talks about the senior population. If you get a call from a senior citizen who does not have transportation, has some type of disability, or who is the primary caregiver for an ill spouse—and this is documented by a doctor—what happens then?

**Wanda Lopshire:**

You are speaking to the people 70 years of age or older? They do have an exemption if they express an interest or a hardship in any way. We let them know they have an age exemption and that they are free to use it.

**Chairman Anderson:**

I think Assemblywoman Gerhardt's question is relative to someone who has an infirmity. Age may be one of those questions, and you have answered it for

age, but what about those people who are the only caregiver in a home or those who do not have the capacity to get from point A to point B. Is there some exemption for which they can apply?

**Wanda Lopshire:**

Yes, we request a written statement from their physician, either stating they have a physical disability or that they are a full-time caregiver—not someone who is employed, but is a full-time caregiver for an ill spouse or child, or special-needs child.

**Assemblywoman Gerhardt:**

I have to disagree with you, respectfully, because my mother had a situation where she was the primary caregiver of my father, who had Alzheimer's. It was documented by doctors, and she was made to go down and sit there all day long. So I do not think that is how it is working.

**Wanda Lopshire:**

Was that in Washoe County?

**Assemblywoman Gerhardt:**

No, that was in Clark County.

**Wanda Lopshire:**

I am sorry; I should clarify that I am the Jury Commissioner for Washoe County, and I speak to practices in my county and in my office. It is our policy in Washoe County to release people based on a physician statement.

**Assemblywoman Gerhardt:**

There is no uniformity within the State?

**Wanda Lopshire:**

No, there is not.

**Chairman Anderson:**

So, that begs the question of where Washoe County gets the opportunity to exclude somebody if we do not provide you with that ability by statutory discretion.

**Wanda Lopshire:**

At one time, we had a list of what were called "courtesy exemptions," which existed well before the 14 years that I have been in office. Those exemptions included nursing mothers, students, and a long list that I will not go over. When the Rose Commission did our findings and met with Chief Judge Hardesty, we

eliminated everything except medical hardship. I would find it hard to believe that Clark County does not honor a medical hardship. It is common sense that you cannot serve if you are ill or if you have a special-needs child without care. It is a very narrow frame as to whom we release, and we do require a letter—specifically to the jury commissioner's office—from that individual's doctor stating they are not fit for jury service. It cannot be a general letter, and it cannot be a personal statement.

**Chairman Anderson:**

Judge Hardcastle, would you like to enlighten us on the practices in the Eighth Judicial District?

**Kathy Hardcastle:**

Yes, and I apologize if that happened in Clark County. That is not our policy. Our policy is that if the doctor's statement is provided, they are entitled to be released from jury service. I talk with my jury commissioner on a fairly regular basis, and as Chief Judge of the District, I have the authority to excuse people from jury service based upon information they provide to us, even if they are not available to provide a direct doctor's statement. If they can provide us other information, then we can review it and I can authorize the commissioner to excuse that individual from jury service. I will definitely check back with my jury commissioner about the issue that you have raised.

**Chairman Anderson:**

Thank you for the information to the Committee. If anyone else feels that their issue has not been raised, we need to further discuss this if they want to get on the record. The hearing is closed on A.B. 49. I ask both the representative from Washoe County and someone in the Administrative Office of the Eighth Judicial District Court to find out from the jury commissioner in Clark County—in a written format—where they get the authority to give courtesy exemptions. Also, find out what the policy is of Clark County and of Washoe County relative to these courtesy exemptions. Further, I would ask that a representative be contacted from each of the rural counties to determine whether there are exemptions that exist there and the less-populated areas. We need to do a poll if we are going to proceed with the bill. The bill is not moving very well. It raises several concerns for me. If you are interested in moving this bill along, you definitely want to talk to me about it. I keep an informal poll as to when people want to do this. Remember, as soon as I have seven Assemblymen who indicate they definitely want to take action on the bill, one way or the other, then we will bring it to a work session.

Let us turn our attention to A.B. 4. This is a prefiled bill filed in early December. I did not realize you had brought the Legal Counsel of the Legislature with you

this morning, Assemblyman Mabey. Had I realized that, I would have clearly given you preemption over the world.

**Assembly Bill 4: Revises provisions providing immunity from civil liability for certain medical facilities and certain medical professionals who render certain emergency care. (BDR 3-450)**

**Assemblyman Mabey:**

I have two purposes. The first is hopefully to show that you can teach an old dog a new trick. Second, I hope that I can assemble and explain this bill in a way that the members of this Committee can understand why it is important that it passes.

First of all, this section could be referred to as the Good Samaritan section of our laws, and I would just like to recap what happened in the Good Samaritan. There was a man that went from Jerusalem to Jericho and on his way he was attacked and robbed, then left for dead. Shortly thereafter, a man came by, saw him, and passed by and did not help him. Later, another man came by, went over to see him, but then left him lying on the side of the road. Well, a certain Samaritan came by and noticed he was there and went over and took care of him—cleaned out his wounds, took him to an inn, and made sure that he was taken care of.

The reason I tell you that story is I feel like physicians are in that position of being a Good Samaritan. We have the opportunity to pass by and not render assistance, or we can be like a Good Samaritan and render the care a person needs. As a physician, my concern is if I render the care, and I do the best I can, and there is an adverse outcome, then, the way our law is currently written, I can be held liable. Then, I face the possibility of a lawsuit. A lawsuit then takes up my time, and may make it harder for me to obtain liability insurance and make my premiums go up. All of those things will affect my future just because I volunteered and was a Good Samaritan.

The purpose of A.B. 4 is to remove a provision that makes, in my opinion, this Good Samaritan bill ineffective for physicians who provide emergency obstetrical services. As a doctor, it is in our blood that we want to help people. It is like a bird-dog who likes to go duck hunting or goose hunting. Well, a physician likes to take care of people. That is what we were raised and trained to do.

Now, I want to walk you through the bill. Section 1, subsection 1 deals with supervising or giving instruction to a medical attendant or registered nurse, so this part is fine. It is subsection 2 that causes the problems, because it says

"except as otherwise provided in subsection 3." Subsection 3 has to do with obstetrical care. Subsection 2 has to do with all emergency medical care that does not have to do with obstetrical care.

In subsection 3, you will read that this provision has to do with emergency care or assistance to a pregnant woman during labor or delivery. There are three clauses under subsection 3. Clause (a) says "the care or assistance is rendered in good faith and in a manner not amounting to gross negligence or reckless, willful or wanton conduct; and," clause (b) continues, "the person had not previously provided prenatal or obstetrical care to the woman." You will see after clause (b), clause (c) states, "and the damages are reasonably related to or primarily caused by a lack of prenatal care received by the woman." A.B. 4 removes clause (c).

I want to give you an example. Let us say a lady is attending this conference today, who is expecting and near her due date. She has received prenatal care by an obstetrician here in Carson City, but there is a different physician attending this hearing. He finds out that she is in labor, so he examines her and finds she is ready to deliver. She is bleeding excessively, so he delivers the baby. Could the doctor be liable? He did the best he could. If we look at the statute, we can answer this. One, did the doctor do the best he could to take care of her? Yes. Was his gross negligence reckless? No. Was the care rendered well? Yes. Had the woman not received prenatal care from the doctor? Yes. Were the damages reasonably related or primarily caused by the lack of prenatal care received by the woman? No. The damages, if there were any, were caused by something that happened long before she came in here. Maybe it was something that happened during the delivery, but it was not related to the prenatal care. That is why this provision needs to be removed.

If a doctor who is taking care of somebody did the best he could and had never given her prenatal care, but the damages were not primarily related to the lack of prenatal care, he could be held liable. That provision needs to be removed. This part makes this Good Samaritan law not effective for physicians rendering obstetrical care. I know it is confusing. I went through this 100 times. I know there is going to be opposition and that is why I asked Brenda Erdoes from the Legal Counsel to give us a legal position. Dr. Florence Jameson will testify later. She rendered emergency care and was then involved in a lawsuit because of that. She obviously did her best, then was still involved in a lawsuit. I have asked for legal counsel to back me up, and I have asked for an example to show that I am correct.

**Assemblyman Horne:**

As I see it—and correct me if I am wrong—all three of these conditions have to be met. But you have instances where they have been met, and doctors have still been held liable?

**Assemblyman Mabey:**

Correct.

**Assemblyman Horne:**

The clause you want to strike—"the damages are reasonably related to or primarily caused by the lack of prenatal care received by a woman"—that is a lack of prenatal care, period, by any doctor, not just the doctor who is providing the service there. Is that correct?

**Assemblyman Mabey:**

The way I read the bill is that the damages have to be caused by the lack of prenatal care. In my example, the lady had prenatal care, and the damages were not caused by the lack of prenatal care, they were caused by something else. In this provision, you have to show that the damages are caused by the lack of prenatal care.

**Assemblyman Horne:**

In your scenario, would your proper avenue for remedy be in the court? Your attorney can point that all out and you should win.

**Assemblyman Mabey:**

Then, the other attorneys say that the damages were not reasonably caused by the lack of prenatal care. They will say that, in the law, to be excluded, the damages have to be reasonably related to the lack of prenatal care, and her damages were not caused by the lack of prenatal care. That is why it is confusing. I struggled with that, and that is what I had the legal counsel come here to help clarify.

**Assemblyman Horne:**

Changing this statute seems like a complete relief from liability in these situations. We addressed this in 2003, where we have caps now, and now we are going to add another limited liability exclusion for liability?

**Assemblyman Mabey:**

This already pertains to other physicians who provide emergency care under the Good Samaritan Act. If I was attending to a person on the side of the road who was in a car accident, then I would be given this immunity. But for obstetrical care on the side of the road, it would not count because, in this case, the

damages have to be caused by something that occurred from the lack of prenatal care, not anything to do with taking care of her on the side of the road.

**Assemblyman Horne:**

What if you are an employee physician providing emergency care because that is your job? Is this going to apply?

**Assemblyman Mabey:**

No, it would not. This has to be done gratuitously, so the person is doing it free of charge. There is no intent to receive any remuneration for this. So, in the hospital, a physician who is hired by the hospital to deal with emergency care would not be immune because that is his job.

**Assemblyman Segerblom:**

Going back to your example, what would be the cause of the cerebral palsy?

**Assemblyman Mabey:**

The cause of cerebral palsy could have been, and probably was, an event that occurred during her normal pregnancy, and it happened a long time before her labor. But in this case, maybe it was a difficult delivery and there was some hypoxia—the lack of oxygen—and so the baby subsequently develops cerebral palsy.

**Assemblyman Segerblom:**

You would exempt the doctor from something that happened during the delivery because it was done on an emergency basis?

**Assemblyman Mabey:**

Yes, sir.

**Assemblyman Segerblom:**

But if it were done in the hospital, they would not necessarily be exempt?

**Assemblyman Mabey:**

It would depend. If the physician is hired by the hospital to be there to handle emergencies, then I think he would be liable. But there are certain circumstances in which I think he would be exempt. For example, a few years ago, when I practiced obstetrics, I was doing a delivery. They called and asked for any physician to please come to the emergency room. I ran to the emergency room and the lady had been shot in the head. She was near term, and they thought she would probably die but asked us to perform an emergency cesarean section to try to save the fetus. We did that and unfortunately, the baby was dead when we delivered it. In my opinion, in that case, the doctor



should be immune to liability. He was a Good Samaritan. He ran to the emergency room and provided care. My other option would have been to not go to the emergency room. In my opinion, there should be immunity for physicians who act as Good Samaritans and render care gratuitously.

**Chairman Anderson:**

I presume that it is your desire to have the letter that comes from the Legislative Counsel to be entered into the official record of the day and made part of the record for this Committee? Because it was directed to you, you are the only one who has the right to release it ([Exhibit F](#)).

**Assemblyman Mabey:**

Yes, I would like everyone in the Committee to have the legal opinion.

**Chairman Anderson:**

It has been distributed to the Committee. Ms. Erdoes, the Committee has just received the letter, and I have to read it several times before I talk to you and make sure that I have not misinterpreted what you have told me. Is there something peculiar here that you want to draw to the attention of the Committee?

**Brenda Erdoes, Legislative Counsel, Legislative Counsel Bureau:**

I would simply point out that there is somewhat of an anomaly, I think, that causes a little bit of confusion in this section on page 2 of the bill, between subsections 2 and 3, and that is actually what the opinion addresses. Assemblyman Mabey asked us whether the protection from civil liability for damages set forth in subsection 2 would apply to a physician who renders obstetrical care. The answer was no. Even though it does not specifically say that, the fact that subsection 2 starts with the phrase "except as otherwise provided in subsection 3," does mean that the specific provisions of subsection 3 apply, then subsection 2 does not apply. That is really all the opinion does. Maybe that will save you a little time instead of reading the three-and-a-quarter pages there.

**Chairman Anderson:**

We will read it. People come into emergency rooms because there are kinds of emergencies other than just in your particular area. Unlike most emergencies, pregnancies are something that you recognize early on, and, therefore, hopefully people are getting treated. We recognize that this was something that was put into a different classification. You feel that we have endangered the Good Samaritan aspect of this, so you are trying to broaden it to another area, yet holding it down narrowly to that one group of physicians.

**Assemblyman Mabey:**

It is my opinion that this part of the language makes ineffective the Good Samaritan Act for physicians who provide emergency obstetrical care. So physicians are reluctant, or may be reluctant, to render emergency care because they will not be immune.

**Assemblyman Horne:**

On page 2, line 17, it says "gratuitously and in good faith." In paragraph 3, it does not mention it being gratuitous at all. So, you are saying that because in paragraph two it says "except as otherwise provided in subsection 3" that it does mean that subsection 3 is gratuitous or is not gratuitous. Maybe the remedy would be to put gratuitous in there, and keep that (c) paragraph, because I do not see—in subsection 3 anyway—that it shows it has to be gratuitous emergency care.

**Brenda Erdoes:**

You are correct. I believe subsection 3 differs from subsection 2 in that way. As you pointed out, it says "who renders emergency obstetrical care assistance." Then, in paragraph (a), it talks about "rendered in good faith," but it does not have the gratuitous portion in there, so it applies both in those cases of gratuitous and nongratuitous.

**Assemblyman Horne:**

Should we do this as presented and strike (c), this would apply to both gratuitous and nongratuitous medical care in an emergency situation. Is that correct?

**Brenda Erdoes:**

Yes, I believe it is.

**Assemblyman Mabey:**

I am not a legal draftsman. If subsection 3 does not presently read "gratuitous," I would support that, and that is certainly the intent. So, if the Committee desires to proceed with the bill, in my opinion, (c) has to be stricken or it is ineffective. But I would certainly support putting "gratuitous care" in there.

**Lawrence P. Matheis, Executive Director Nevada State Medical Association:**

Assemblyman Mabey has made the case, and we support it, as well. The issues were combined, and I do not think the intention has been fully reached in having this. I agree that it means when it is gratuitous care and also when there is an emergency situation and the doctor who is going to be delivering the

child did not provide prenatal care. Those were the conditions that were being discussed because the doctor who is delivering the baby but did not provide prenatal care has limited knowledge if there are problems to expect. The issue is by qualifying that if there are already damages, the damages have to be a result of whatever prenatal care, or the lack of, undoes the protection or the encouragement for providing that care. Dr. Jameson has more details and can fill those in much better than I can.

**Assemblywoman Gerhardt:**

Is this the appropriate time to ask Assemblyman Mabey a question?

**Chairman Anderson:**

Let us listen to the doctor first so we get her on the record.

**Dr. Florence Jameson, President, Clark County Medical Association:**

I am an obstetrician and I have practiced for 22 years in Las Vegas. Recently, I was Chief of Obstetrics at Sunrise Hospital, and I am now President of Clark County Medical Society. Today I would like to do give you an idea of where I am coming from, the Labor and Delivery Unit that you do not get to visit very often.

The Labor and Delivery Unit used to be a beehive of activity, and we, as physicians, would hang out there to discuss cases and help one another. However, things have changed a lot because of the malpractice crisis. For myself, it changed when I received a lawsuit in a case in which I rendered gratuitous care. I was a Good Samaritan.

I had just finished a delivery of my own a few years back, and there was a call in the OB suite for anyone to come and help right away. I was already suited up, so I stepped back there and asked what was going on. A cesarean section was in process, and the woman and baby were bleeding to death. I was asked to step in, so I did, and in about 90 seconds, I was able to help the other physician deliver the baby. I went on my way and was happy that I lived in a place where we had people who would help out one another without thinking about it. Things have changed. I got a call a couple years ago from a friend who said, "Florence, did you know you're mentioned in a lawsuit?" I said no; I thought they were joking. They said, "Are you aware it has to do with when you acted as a Good Samaritan?" I said, "No, I am not aware of that." I immediately located the lawsuit. I had not received a complaint. I talked to my insurance company, and he assigned me lawyer. My lawyer said that I should not worry because I acted as a Good Samaritan in good faith. I did nothing wrong, so the case would be reviewed, and I should be dropped in a short period of time.

Those couple of years were a living hell. I had to come up with a new insurance company because my insurance company left town. They told me that with these open policies as an obstetrician, you are very high risk and it is going to be difficult to insure you. They eventually found a different insurance for me, and instead of maybe \$80,000 as a going rate, they said—with an open case with a bad baby lawsuit—it will be about \$250,000. That was going to put me out of business. For a few months, I sweated what I would do. I realized if that is what had to happen, that is what it would come down to. Eventually, however, they said if I could settle the case, they could insure me. I was forced to close the suit and then became more eligible. As I got insured, I was penalized by paying a much higher price.

My point is that I got involved in a Good Samaritan case, my liability went up, and it is still a big liability force, particularly with Good Samaritan cases. Now, in Labor and Delivery when we look around, the floors are quiet. It is hard to find assistance; people do not hang out there anymore. It is hard to find an obstetrician. My partner says that he will no longer walk through Labor and Delivery because of the fear of being asked to assist and having a lawsuit. Another doctor has told the Labor and Delivery nurses not to call him. Another says that with the way things are, he plans to leave here. He is going to Mexico by age 40 to get paid with chickens, and not have to deal with the stresses of what happens here if he is on a Labor and Delivery floor and walks through wanting to be a Good Samaritan. It is like there is a target on his back.

Now, Labor and Delivery is a much quieter place, and it is hard to find a doctor when you need one. Right now, there is a lawsuit against an obstetrician who was stuck in traffic and could not get to the hospital in time. His patient and the baby had a poor outcome. Is it a coincidence that there is just no one there or is it because of the way the Good Samaritan Act is interpreted now? The Good Samaritan Act, in my opinion, is bad public policy. It is a barrier to physicians, and it is a ridiculous law. I assume when we write laws, our main principle in obstetrics is number one—do the patient no harm. In the Labor and Delivery unit, this law—unintentionally as it may be—is greatly harming the most helpless citizens of all, mother and child. The availability of doctors is strongly discouraging.

To end, the obstetricians have changed a lot. We have lost a lot of our optimism and become jaded, but we are no fools. We are now wise that this Good Samaritan bill, the way it exists now, singles us out. It is rigged against us and the patients. Why would they make themselves more available? To increase their liability and stress and risk their family care? When a doctor hears a call for help, why does this barrier have to be there? Can we get rid of it? Is

it supposed to help the doctor, the patient, the baby? I ask you to help us help the women. Just imagine if your wife, daughter, or your loved one was in the operating or delivery room in an obstetrical emergency and there was no OB/GYN.

**Chairman Anderson:**

Are there any questions for the doctor? The question that always triggers for me is the concern of physicians coming over. Is it because of the fear of how much it is going to cost in their increased insurance premiums? Is that overriding the desire to do Good Samaritan work? By removing Good Samaritan, are we going to change insurance premiums, so that doctors feel like they are not going to have the economic restraints that are created by that? If you could formulate an answer for me so we could submit it in the record, I would appreciate it.

There are several other people who have indicated a desire to speak on the pro-side of this issue. If there is an issue that you feel has not been raised, then come forward. Let me turn our attention to those who have concerns about the bills effect upon other parts of society.

**Bill Bradley, Representing Nevada Trial Lawyers Association, Reno:**

This is obviously a very serious question to physicians, and I want to make sure that I speak clearly. We are not opposed to seeing the Good Samaritan Act extended to an emergency situation involving obstetrical care where gratuitous service is involved, but a few things happened between the day Jericho got beat up and today. I believe that in 1995 Mr. Carpenter came to the Committee and to the organization with a concern about women delivering on the highway in Elko, who showed up in the emergency room, and a baby being born that was compromised. It was not because of the care of the physician in the hospital, but because of the lack of prenatal care or the lack of appropriate prenatal health of the mother. That is what leads to the creation of the statute that Assemblyman Mabey wants to change. The Good Samaritan act was always intended to apply to any emergency situation where gratuitous care is rendered. Where the rubber really meets the road, is when a pregnant woman who has received good prenatal care comes to a hospital and her obstetrician is not available. I do not think Assemblyman Mabey intended that if another obstetrician who is paid to cover that first obstetrician's care commits malpractice, that they are exonerated. If that is Assemblyman Mabey's intent, we are adamantly opposed to extending that kind of immunity. The problem with the legislation that you assemble is that there are 4,000 lawyers out there who get to twist what you mean. If we adopt the language, as Assemblyman Mabey has suggested, this statute will be used in every obstetrical case where there are horrible injuries inflicted on a newborn, where

the actual physician who provided nine months of care is not involved at the delivery. This statute will be used to prevent that woman and that baby from getting appropriate limited compensation because of the intensive immunities already extended to physicians from the Keep Our Doctors In Nevada initiative. I am more than happy to get back to the days of Jericho where if a woman delivers, as Assemblyman Mabey suggested, and there is a problem and he assists that baby gratuitously and in good faith, and that baby is born with problems that have nothing to do with his care in an emergency situation outside of a hospital, I think we can certainly reach something that will meet the expectations of this Committee. I want to make sure we do not sacrifice Assemblyman Carpenter's intent from 1995 because we worked hard on that bill. But, if we are looking for the Good Samaritan, let us make sure we live up to the expectations and the standards that were set forth by Jericho. Thank you.

**Chairman Anderson:**

Are there questions for Mr. Bradley? [There were none.]

**Assemblyman Mabey:**

I agree with Mr. Bradley. If a physician is covering for another physician, that person should not be exempt. But there are cases when a physician will be in the hospital and will have to provide emergency care. I will be more than happy to work with Mr. Bradley on language that will be acceptable. If we are to proceed with the bill, we are going to need some of these things fleshed out.

**Chairman Anderson:**

Mr. Bradley, if you would make yourself available to work through your office on the bill, I would ask that, in a timely fashion, you get something to Ms. Chisel so that we can deal with this. Is there anyone else in opposition who needs to get on the record? Let me put into the official record for the day Mr. Musgrove's statement from the Universal Medical Center in support of A.B. 4 ([Exhibit G](#)). Also, please include the two letters in support of the bill from Paul Chao, OB/GYN, Valley Hospital, Las Vegas ([Exhibit H](#)) and Stephen Dahl, Justice of the Peace, Las Vegas ([Exhibit I](#)). In addition, Ms. Foster, I noticed that you are from St. Mary's. I presume you do not have a written statement?

Specifically, list Ms. Foster as being in support of the legislation as presented. Is there anyone else who needs to be specifically recognized? Close the hearing on A.B. 4.

[Chairman Anderson adjourned the meeting at 11:00 a.m.]

RESPECTFULLY SUBMITTED:

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Kaci Kerfeld  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chair

DATE: \_\_\_\_\_

### EXHIBITS

**Committee Name:** Committee on Judiciary

**Date:** February 14, 2007

**Time of Meeting:** 8:03 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 17	C	Sabra Smith-Newby	Clark County testimony
A.B. 49	D	David Kallas	<u>S.B. No. 73 of the 72nd Session</u>
A.B. 49	E	David Kallas	Jurors' Bill of Rights
A.B. 4	F	Assemblyman Mabey	Letter from Brenda Erdoes, Legislative Counsel Bureau
A.B. 4	G	Dan Musgrove	Document from University Medical Center
A.B. 4	H	Assemblyman Mabey	Letter from Paul Chao
A.B. 4	I	Judge Stephen Dahl	Letter to Committee.