

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
March 14, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Wednesday, March 14, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in 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 Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Dennis Nolan (Excused)

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator, Nevada Supreme Court
The Honorable A. William Maupin, Chief Justice, Nevada Supreme Court
The Honorable James W. Hardesty, Associate Justice, Nevada Supreme Court
Stephen J. Dahl, North Las Vegas Township Justice Court, Department 1, Clark County; President, Nevada Judges Association
Jim EnEarl, East Fork Township Justice Court, Douglas County

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Kevin Higgins, Sparks Township Justice Court, Department 2, Washoe County
John Tatro, Municipal Court Judge, Justice Court II, Carson City
Vinson W. Guthreau, Nevada Association of Counties
Alan Glover, Clerk/Recorder, Carson City
Shirley B. Parraguirre, Clerk, Clark County
Diana Alba, Clark County Clerk's Office
Amy Harvey, Clerk, Washoe County
Nancy Parent, Washoe County Clerk's Office
Kathy A. Hardcastle, District Judge, Department 4, Eighth Judicial District
Robert R. Jensen, President, Nevada Trial Lawyers Association

CHAIR AMODEI:

The hearing is opened on the first of several relating to court fees and administrative assessments. Senator Washington introduced a bill on driving under the influence (DUI), and the Senate Committee on Transportation and Homeland Security has a bill introduced by Senator Joseph J. Heck on rural emergency medical technician (EMT) services. Testimony on both bills indicates we may be reaching some limits, and there are stresses in the system associated with administrative assessments and court fees. After hearing Senator Washington's bill, we asked Ron Titus, Court Administrator and Director of the Administrative Office of the Courts (AOC), Office of Court Administrator, Nevada Supreme Court, to bring the Committee up to date on assessment and fee issues. Ms. Eissmann, Committee Policy Analyst, prepared a matrix which she will explain.

LINDA J. EISSMANN (Committee Policy Analyst):

I was asked to research administrative assessments and court fees in *Nevada Revised Statutes* (NRS), including date of enactment and any substantive changes that have occurred since enactment. Also requested was a list of bills under consideration by the Legislature this session regarding administrative assessments and court fees. I distributed a packet of material ([Exhibit C](#)) including two legal-sized tables, one on administrative assessments and one on court fees.

The first column of the administrative assessment table on page 4 of [Exhibit C](#) is the statute reference and dollar assessment; the second column explains the distribution of the assessment and, in italics, time of the assessment; the third column is the date of adoption and by whom, if known; and the fourth column includes substantive changes since adoption. No technical amendments

were included, but I added any amendments that changed distribution of the assessment.

There is a similar table on page 6 of [Exhibit C](#) regarding court fees. The first column is the NRS reference; the second column includes court fees for the Nevada Supreme Court, justice courts, municipal courts and district courts; and the third column is notes. Many have been on the books for years; it was difficult to ascertain who requested the legislation as well as the many changes over the years. I did not go into that level of detail regarding court fees; however, I indicated when court fees were put on the books.

The two-page table on page 2 of [Exhibit C](#) is a summary of bills currently in the Legislature regarding administrative assessments and court fees. Two Senate bills and two Assembly bills regard administrative assessments and the Senate bill being heard today regards court fees collected by county clerks.

RON TITUS (Court Administrator and Director of the Administrative Office of the Courts, Office of Court Administrator, Nevada Supreme Court):

I submitted two handouts: one addresses court fees for administrative hearings ([Exhibit D](#)) and the other represents a slide presentation ([Exhibit E](#)) which addresses administrative and other types of assessments. I learned recently there is an administrative assessment for graffiti, of which I was unaware until I saw a bill increasing graffiti penalties. Upon researching it, we found the assessment had been on the books for some time.

The basic administrative assessment in NRS 176.059 is a sliding scale starting at \$5. If a fine is less than \$5, there is no assessment. The fines slide up the scale; a fine from \$5 to \$50 is a \$25 assessment up to \$1,000, and over \$1,000 is a \$115 assessment. Two other assessments are generally tacked on: a facility assessment of \$10, which is up to individual jurisdictions and covered in NRS 176.0611, and an assessment of \$7 for specialty courts was added in 2003.

It is important to understand the order in which assessments are collected. Not everyone pays the fine up front, some pay in installments and some never pay everything. The first collection effort is the basic assessment of \$25 up to \$115. If the person makes payments of \$25 per month, the first \$25 goes to the first basic assessment. The second \$25 pays off facility assessments and any specialty court assessment. The fine is paid off last.

A fine depends on the location of the citation and what code it is under. If it is under the municipal code, the fine goes to the general fund of the municipality. If it is under the county code, it goes to the county general fund. If it is under the state NRS code, it goes to the State Distributive School Fund to earn interest for the school system. Bills coming before the Legislature put the assessments in an order. The EMT bill in the Assembly places the assessment fourth before the fine and after everything else, which means the order it comes into the assessment is the order it is ranked. I am not sure where the DUI assessment ranks. As assessments are added, fines are suppressed which artificially keeps the bail schedules down in the courts due to the total amount an individual must pay.

It is not just criminals who pay assessments; it is everyone sitting in this room. The fine for a Hollywood stop is \$95, the assessment fee is \$60, the facility fee is \$10, an administrative fee for specialty court is \$7—for a total administrative assessment fee of \$77—which makes a total fine of \$172. Therefore, a \$95 fine turns out to be \$172. The fine for disturbing the peace is \$200, with a total fine of \$300.

District and municipal courts take in the total amount and adjust the fines. If anything is adjusted downward, it is the fine, not the assessment, because the assessment is in statute.

CHAIR AMODEI:

Depending upon the bail schedule for what a person is charged in a petty offense or misdemeanor context, there is a sliding scale in statute. If the fine range is \$200 to \$299, there is an \$80 administrative assessment before going to facility assessment, which is a local option, and then \$7 specialty court, which is global. Therefore, a person must pay whatever the schedule is plus another \$17. How is the schedule amount broken down?

MR. TITUS:

A certain amount of assessments are retained by local courts. The facility fees are used to improve or build new facilities. A certain amount goes to the Judicial Branch, Executive Branch and specialty courts. The base fee is \$25 for the \$5 to \$50 fine in NRS 176.059; \$9 is retained by local courts, and the rest goes 51 percent to the Judicial Branch and 49 percent to the Executive Branch. For local court retention, \$2 supports the juvenile court and \$7 is used by the

court. Statute spells out what the money is used for, which is primarily training, technology and one-time acquisitions.

CHAIR AMODEI:

Out of the general assessment, the first \$9 is retained by local courts, \$7 goes into a laundry list and \$2 funds juvenile court. What part of the funding for juvenile courts in the 17 jurisdictions does the \$2 play?

MR. TITUS:

I do not know. Generally, it is used for special projects and activities not funded by the county. Most juvenile services are funded by the county; in a large county, it amounts to a lot, in smaller counties not as much.

CHAIR AMODEI:

It augments whatever they are using for resources.

MR. TITUS:

That is my understanding.

CHAIR AMODEI:

Is the assessment put on everybody who comes through the system?

MR. TITUS:

Yes, the assessment is put on all misdemeanors.

For fiscal year 2007, there is approximately \$1 million and \$3.5 million for all courts together. These are estimates because 2007 is not yet completed. The problem with assessments is tracking. We have some authority and control over municipal, justice and district courts, but all the money is submitted to the county treasurer. The money seen in the courts goes into a black box and we cannot see what happens. The money then comes out of the black box and goes to the State Controller. We look at what has been reported to us in the courts and try to compare it with what is given us by the Controller; sometimes they match, sometimes not. The black box is in the hands of the county, and we do not necessarily know what transpires. Some counties send us money regularly each month; others hang on to it for a month or two and then send three months' worth, which complicates our accounting. The counties are never on the same cycle as the court; therefore, balancing is difficult.

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CHAIR AMODEI:

Ms. Eissmann, referring to page 4 of [Exhibit C](#), in 1983, a bill in the Assembly Committee on Judiciary established \$1 for county juvenile court; in 1997, the Senate Committee on Finance increased the fee from \$1 to \$2. Is that correct?

Ms. EISSMANN:

In 1997, the bill increased the assessment range.

CHAIR AMODEI:

It says "increased the distribution of funds to Juvenile Courts" I assume that is how it went from \$1 to \$2.

Ms. EISSMANN:

I would need to look at the bill.

CHAIR AMODEI:

I am interested in testimony in the 1983 Assembly Committee on Judiciary bill regarding juvenile court. I would like information from juvenile courts in Carson City, Clark and Washoe Counties regarding the purpose of resources and use of funds.

MR. TITUS:

Under the 51 percent that comes to the Judicial Branch, 60 percent funds the Nevada Supreme Court.

CHAIR AMODEI:

What part does the 60 percent play in the resources available to operate the Nevada Supreme Court?

MR. TITUS:

Our total budget is \$11.7 million; administrative assessments are approximately \$6.8 million, a little more than half.

CHAIR AMODEI:

Is it correct to say more than half your overall budget is funded with administrative assessments under the General Fund?

MR. TITUS:

That is correct. We supplant or return almost \$1.3 million to the General Fund because of excess administrative assessments.

CHAIR AMODEI:

A large portion of the resources available to you depends upon the misdemeanor and petty offense crime rate in the State of Nevada.

MR. TITUS:

That is correct.

THE HONORABLE A. WILLIAM MAUPIN (Chief Justice, Nevada Supreme Court):

I want to make a point regarding money that goes back into the General Fund. There is a mixed budget account which is the Nevada Supreme Court operating budget. When that account is mixed and \$6.8 million in administrative assessments is projected, the remainder is budgeted out of the General Fund. If an excess amount of administrative assessments is collected, it causes a dollar-for-dollar reversion back to the General Fund. A substantial amount of money is reverted to the General Fund from administrative assessment operations.

CHAIR AMODEI:

In those instances, the administrative assessments represent an even bigger percentage. If you over collect, it holds the General Fund harmless for making up the minority of your budget.

CHIEF JUSTICE MAUPIN:

That is in a year when collections are flush. In the last three years, collections did not meet the projection, which means there was a shortfall.

CHAIR AMODEI:

Is that made up out of the General Fund?

CHIEF JUSTICE MAUPIN:

You have to visit the Interim Finance Committee to deal with it.

CHAIR AMODEI:

I understand.

CHIEF JUSTICE MAUPIN:

Projections are submitted based upon historical average. Some years are under, some years over; therefore, this is not the most stable funding source in terms of predictability. This has been studied by the Court Funding Commission.

CHAIR AMODEI:

In terms of funding the Nevada Supreme Court, was it the sales tax override in Clark County that was to put more police on the streets? Perhaps we should have kicked in some money because the more police out there with citation books, the better off we are financially.

MR. TITUS:

In essence, we encourage misdemeanor crime to help fund the Nevada Supreme Court.

CHAIR AMODEI:

Yes, support your Judicial Branch.

MR. TITUS:

It also supports the Executive Branch. To continue, 60 percent of the 51 percent goes to the Nevada Supreme Court; \$18.5 million to the AOC; 9 percent to the Uniform System for Judicial Records which funds technology in the local courts, judicial education throughout the state, various conferences and special education required by the Legislature; and 3.5 percent to the Senior Judge Program. These are the amounts projected for this year. Last year, we reverted approximately \$950,000 to the General Fund; this year, it is estimated at approximately \$1.3 million.

It is important to note the AOC is fully funded by administrative assessments because it has no option to approach the General Fund. If we fall short, we must cut. We try to keep a reserve of three months of operating funds because we operate on cash flow. We do not receive \$2 million on July 1 as do most General Fund accounts; we get whatever is in our bank. Historically, about November, we go into the red and the General Fund or the Department of Personnel covers our payroll until some administrative assessments are received from counties. We track it closely because it is like a deposit to a checking account. We only spend what we get. It is the same for the Uniform System for Judicial Records.

The Senior Judge Program is new. We got significant General Fund dollars for it in 2005. Before that, we ran the program on administrative assessments, which amounted to approximately \$200,000 to \$300,000 a year. That program has been beneficial to the courts.

The Executive Branch gets 49 percent, which is described in the NRS. I am uncertain how they arrive at the percentages. I think they allot the money and calculate the percentages from how much has been allotted. The Criminal History Records Repository receives 58.02 percent, victims of crime receive 20 percent, Peace Officers' Standards and Training Commission (P.O.S.T) receives 20 percent, and 1.5 percent goes to the Advisory Council of Prosecuting Attorneys. These funds are distributed according to the projected revenue at the time budgets are done. For fiscal year 2007, the excess amounts to \$2.2 million and goes to the General Fund.

If we estimate \$20 million in revenue and administrative assessments, the Executive Branch divides their 49 percent of \$9 million. If more is collected, the excess does not go to any individuals who receive funding from it.

The total budget for Executive Branch programs is \$20 million with 25 percent from administrative assessments. Approximately one-quarter of the funds are received by victims of crime; police officers receive approximately one-half, and prosecuting attorneys are funded.

The projected amount for administrative assessments in 2007 is \$30 million, which includes local and specialty courts. The base amount, divided by 49 percent and 51 percent in the Judicial Branch, is excess. The \$30 million is approximately \$3 million more than projected in last session's budget. Approximately \$1.3 million will revert to the General Fund from the Nevada Supreme Court operating fund. We will receive approximately \$2.3 million from the Executive Branch.

Accounts fully funded by administrative assessments retain any excess in the account, which are reserves for years the full amount is not collected. A brief history of administrative assessments shows an addition in the 2003 Legislative Session of \$7 approved for specialty court and assessments increased by \$10 across the board.

I will address court fees in [Exhibit C](#). Fees are paid for civil filings, some go to the state General Fund but most to local general funds of the city and county. The fees are used for: aid to victims of domestic violence, compensation to victims of crime, various alternative dispute resolution programs, various pro bono programs, prevention and treatment of alcohol and drug abuse, legal aid for indigent and elderly persons, abused and neglected children, and a \$1 fee to the Department of Taxation. The filing fee for divorce goes to the Department of Employment, Training and Rehabilitation as well as a fee added in the 2003 Legislative Session for court technology and the Senior Judge Program.

CHAIR AMODEI:

In the February 22 hearing on Senator Washington's Senate Bill 45, Joan E. Neuffer, Staff Counsel, Administrative Office of the Courts, Nevada Supreme Court, used the term "nexus" in regard to administrative assessments in which she meant the nexus between the contexts of administrative assessment collections and use. The programs are laudable; it is a good way to collect money without connecting the dots for cause and effect.

Mr. Wilkinson, please contact Ms. Neuffer to ascertain, for all de facto purposes, the way the Legislature funds some of these programs. Mr. Titus, what year was the Executive Branch allotted 49 percent?

MR. TITUS:

It was in 1987.

CHAIR AMODEI:

At some point in time, if we start to get away from nexus in some of those things, how will it be evaluated if litigated?

MR. TITUS:

In 1991, a 51 to 49 split approved in the Nevada Supreme Court case *McKay v. City of Las Vegas*, 106 Nev. 203, 789 P.2d 584 (1990) addressed the issue.

SENATOR MCGINNESS:

In past sessions, money was allotted to education for defense attorneys defending capital cases. Is that still available?

MR. TITUS:

Yes, it is funded out of the Executive Branch part of the program, which is something less than 1 percent.

CHIEF JUSTICE MAUPIN:

In the past, lawyers and judges were trained in handling death penalty cases sponsored by the AOC. Six years ago, Justices James W. Hardesty, Miriam Shearing and I, as well as lawyers and judges, attended a program on how to deal with discrete due process issues that come with the death penalty. We have not done that program in a long time; however, we will be doing several educational programs which will come through the judicial education portion of administrative assessments.

Pursuant to the tort reform bill for medical malpractice, comprehensive programs will be held for judges around the state. All judges handling medical malpractice cases will be required to attend. The programs will cover physiology for trial lawyers, anatomy and physiology on the law of medical malpractice and rules of contribution and indemnity that bear on multi-defendant cases. The program will cover the same things in regard to death penalty and construction defects. These educational initiatives will mirror Legislative public policy mandates to ensure judges provide the kind of service that will accomplish statutory initiatives.

SENATOR MCGINNESS:

Testimony led us to believe continuing education for defense attorneys and judges would save on appeals because mistakes were made in the trial or allegations of ineffective counsel.

CHIEF JUSTICE MAUPIN:

A major component of our death penalty caseload is on direct appeal from the conviction. After it is affirmed, a post-conviction procedure deals with ineffective assistance of counsel. Statistics demonstrate that is where a significant number of cases are reversed. We are attempting to deal with that problem with this program.

SENATOR WIENER:

In regard to the 1987 agreement to include the Executive Branch and the determination of the 51 to 49 split, it would be helpful if staff could provide a summary of the Committee dialog as to why the policy was driven that way.

CHAIR AMODEI:

From the provided information, it looks like something court- and judicial-related; then, 48 months later, the Executive Branch is involved. The issue is money, not a policy of whether counsel or the judiciary should be educated. We are looking at petty offenders and misdemeanants funding the AOC, blaming it on Ms. Neuffer and the nexus, and paying for victims of crime—are those victims of petty offenses and misdemeanors? I think not.

Regarding prosecuting attorneys and P.O.S.T., do P.O.S.T. programs teach petty offense and misdemeanors? I do not think so. Mr. Wilkinson, if there is no relation to the assessment and use, what kind of ground are we on in terms of that policy decision for funding?

THE HONORABLE JAMES W. HARDESTY (Associate Justice, Nevada Supreme Court): I participated on the Court Funding Commission, of which Senator Amodei was a member, and delved into this issue in depth. In effect, what developed over the years is the equivalent of an Enron off-balance sheet income and expense system that must be examined by the Legislature in great detail. The nexus issue is a significant question, and the Court Funding Commission pointed out a number of unstable funding sources.

In many instances, there is no relationship between fees generated and expenses incurred. This places the third branch of the government of Nevada in a precarious position to meet its goals and objectives. The funding source is unstable and unpredictable with no relation as to third branch funding under the obligations existing in the *Constitution of the State of Nevada*. When the report was delivered to the Legislature in 2005, a subsequent funding commission was suggested to recommend a transition from this system to a proper accountability system within the General Fund. Unfortunately, that commission never formed, but the issue is critical as to how the budgeting process takes place.

The AOC depends on administrative assessments. The AOC has any number of tasks, many assigned through legislation adopted by the Legislature. The Legislature demands, "Give us a report on murder and involuntary manslaughter convictions; give us a report on domestic violence; give us a report on this or that"—all of those things require staffing, yet all that staffing must be dealt with through an administrative assessment program, not the General Fund. This is problematic in running the third branch of government effectively.

CHAIR AMODEI:

Mr. Titus, would you ensure Mr. Wilkinson has whatever materials were generated from the Court Funding Commission?

SENATOR WASHINGTON:

Did the Commission consider not only the revenue streams and the assessments but also the expenditures and outgo of fees collected?

JUSTICE HARDESTY:

Yes, the report reflects it. One objective of the Commission was to report to the Legislature and the citizens of Nevada the true cost of the Judicial Branch of government. Some conclusions were developed, but one of the things the Commission highlighted was inconsistencies in accounting procedures between various districts and problems with revenue sources. The net result was concern that justice was inequitable or different and unequal in some districts versus others because of funding sources, accounting statistics and the like.

SENATOR WASHINGTON:

Did an outside firm perform an audit for those jurisdictions to determine not only revenue but also expenditures to ascertain inequity in collections as well as spending?

JUSTICE HARDESTY:

The Commission was not assisted by an outside firm but made up of 33 individuals from around the state, some inside and some outside the judiciary. For example, William E. Martin, President and CEO of Nevada State Bank, was cochair of the Commission with two or three representatives from the Legislature. The Commission's report pointed out the need to pursue further development of the manner in which costs and expenses are reported and accounted. It was a responsible effort on the part of the third branch of government to make itself accountable financially for the revenue and use. The administrative assessment issue was a major component of this because, as I characterized earlier, it is kind of an off-balance sheet operation. Many expenses may not have anything to do with traffic tickets.

SENATOR WASHINGTON:

Are the facts and findings within the Court Funding Commission report?

JUSTICE HARDESTY:
Yes.

MR. TITUS:

The AOC staff did an extensive survey to all courts requesting information concerning their expenses and revenue, detailed in the report. Significant time was spent talking to the counties to ensure correct dollar amounts. No auditor was involved.

SENATOR WASHINGTON:

Within the auditing procedure, did you aggregate funds needed to run the Judicial Branch as opposed to funds used to support other programs and entities outside the court?

JUSTICE HARDESTY:

That was to be the second phase of the Commission's review. An aggregate number was developed, but there was no confidence among Commission members that the number accurately reflected judicial duties versus outside duties.

SENATOR WASHINGTON:

If a switch from assessments to the General Fund is requested, it would be appropriate for the Committee to know the aggregate numbers. If the revenue sources are changed to support the Judicial Branch, did the Commission consider a mechanism to retrieve and collect the resources to disseminate them to the Judicial Branch?

JUSTICE HARDESTY:

The Commission identified the mechanism but did not discuss how to channel resources. That would be part of the follow-up study. The Commission report was published in March 2005.

SENATOR WIENER:

The AOC funding is unsettling. We must hope many criminals perform illegal acts to ensure enough money is received to run the AOC. If the AOC does not receive what it needs, it must cut back, yet the demand is still there. It is disturbing that the whim of criminal behavior determines whether the AOC functions.

Is it accurate to presume there are AOCs or an equivalent in every state?

MR. TITUS:

Yes, there is either an AOC or an office of the administrative courts.

SENATOR WIENER:

Could we get a sense of funding streams from other states in order to support the operations of the third branch? It would help to provide perspective on the issue.

CHIEF JUSTICE MAUPIN:

When comparing Nevada to other states, we must consider Nevada's temporary population every weekend, particularly in Las Vegas and the Reno-Lake Tahoe area, which inflates the number based on population. On a qualitative basis, it would be interesting to see how relevant it is when comparing statistics.

SENATOR WIENER:

I amend my request. Is there data to support how much the resident population is involved in fines and assessments versus the transient population?

MR. TITUS:

I do not think so, but I will inquire.

CHAIR AMODEI:

The primary issue is whether other states fund these functions with assessments.

MR. TITUS:

Most states think the judiciary should not be funded by or benefit from levying fines upon people who appear before them.

CHAIR AMODEI:

Is it correct to say funding for the Nevada Supreme Court and certain programs in the Executive Branch come from imposition of administrative assessments in the daily operation of the Judicial Branch for petty offenders and misdemeanants in Nevada?

JUSTICE HARDESTY:

You are correct. Nevada has the busiest supreme court in the United States, bar none. Our caseload is 305 cases filed per appellate judge per year. California has approximately 167 cases; Arizona has approximately 171; therefore, the tasks the Nevada Supreme Court must accomplish to adjudicate over 2,300 cases a year requires enormous effort in budgeting and planning to meet those objectives. The task is becoming impossible. It has a direct relationship to the Nevada Supreme Court's ability to meet this difficult caseload and deal with these issues on a timely basis.

SENATOR WASHINGTON:

Several sessions ago, we established a business court with intent to provide revenue through the Secretary of State's filing fees. Is that being done?

JUSTICE HARDESTY:

I was cochair of the committee that researched and developed the business court with Gene Porter, former Chief Judge of the Eighth District and former Justices A. William Maupin and Bob Rose. The business court is operating in the two urban courts in Nevada. It has been successful in the second judicial district, revitalized in the eighth judicial district and its financial source is essentially current court budgets. There is no separate, independent budgeting source for those courts.

SENATOR WASHINGTON:

Did we consider augmenting and providing revenue for the business court through corporate filing fees? Was it removed from the table because we were trying to be competitive with Connecticut and other low-paying, corporate fee-filing states?

CHIEF JUSTICE MAUPIN:

I do not know any other funding sources, but I know what exists. The funding source is the salary the state pays district court judges assigned to those dockets; the counties pay their administrative expenses. Former Chief Justice Bob Rose and I promised to do this without legislative or constitutional intervention by administratively creating dockets within the district court system as it then existed. This way, they could rotate without a constitutional business court. It would be something judicially created on the model of the chancery system in Delaware, Maryland, North Carolina and the like. We tried to use existing resources to address a legislative agenda that was important to ensure

diversification of the economy. At this point, we have to look at business court reports to see whether it is meeting the need qualitatively.

JUSTICE HARDESTY:

As Chief Judge of the Second Judicial District Court for three years and having run the budgets, I will tell you the business court receives no financial support from the Secretary of State or any other source. We began it with no money and are running 200-plus cases per year with disposition rates of 83 days. It is a remarkable success with some of the most high-profile business litigation occurring in the country in those two courts. It is not costing corporations extra fees to come here.

STEPHEN J. DAHL (North Las Vegas Township Justice Court, Department 1, Clark County; President, Nevada Judges Association):

All of the millions of dollars on the charts in [Exhibit C](#) were raised by our courts. Almost every penny of administrative assessment fees comes through justice and municipal courts. The policy subconsciously hopes for more crime. A good year in raising administrative assessment fees is a year when the crime rate goes up; a bad year is when the crime rate goes down. Success in raising administrative assessment fees depends in large part on our failure to prevent crime. In the system of raising money based on crime, lower court judges are essentially the bagmen. The most consistent voices opposing the administrative assessment fee setup are lower court judges. We have been unhappy with the setup since the outset and still are for many reasons.

It is not difficult to collect fees because the staff collects them. However, the policy adopted by the state in funding the court system through administrative assessment fees, in large part, trickles down to local governments. Local courts are told they have administrative assessment fees to spend, and they will no longer be budgeted. This raises questions on a couple issues. Years ago, local courts kept fine money until the appellate and U.S. Supreme Court said they could not do it. This was because judges would have reason to fine more because they keep the money. It is a conflict of interest.

We are now in that position. If we want money, we need to impose fines and collect administrative assessment fees; we are back to collecting our own money, which creates ethical concerns. We are not enforcing policy or collecting money for the General Fund because we know part of what we collect is money that will be ours. Seven dollars for the courts and ten dollars

for building fees is our money, and collecting it is part of the process of our function. Many of us are uncomfortable with it.

I am a former public defender and not comfortable raising money to train prosecutors. To answer Senator McGinness's question, years ago I was on the capital defense project which received separate funding from the Legislature. The funding and the project died out after a couple of sessions. As far as I know, administrative assessment fees have never gone toward training for defense counsel. It was done as a separate budget item.

It is what we are raising money for, it is how we are doing it, it is the policy that stands behind the whole idea and it also locally affects governments. Most judges do not think of fines and administrative assessment fees separately and impose an amount they think is just under the circumstances. For example, a judge cannot impose a \$150 fee because administrative assessment fees do not break down that way. A fine of \$149 or \$152 must be imposed. We imposed a just amount. The administrative assessment fees come off and then the fine is paid, which cuts into revenue for local governments because the fine is not getting any higher with more administrative assessment fees attached. The local government receives less money because more of the \$150 pays administrative assessment fees than goes toward local government.

In every jurisdiction, a \$5 fine costs \$47 due to administrative assessments. Judges are not comfortable with that situation. Most people we deal with are indigent. Most of my criminal defendants are represented by the Office of the Public Defender. We still squeeze them for the money because there are millions of dollars in those charts in [Exhibit C](#), but these people cannot continue to pay more. We did an informal study over the past couple of weeks, randomly pulling cases, and found approximately two-thirds of offenders pay the fine and one-third do community service or go to jail. The higher the fees, the greater the amounts of people who do community service or go to jail. It is not helpful to local governments or the courts. It creates an uncertain funding system on the specialty Court Funding Commission. To reiterate, a good year for us is when crime goes up because we get more money; I am not sure that is the way to fund a system.

JIM ENEARL (East Fork Township Justice Court, Douglas County):

Senator Amodei brought up the concept of nexus. The vast majority of people who pay fines are minor traffic violators. When I took office in 1995, the fine

for going 35 miles per hour in a 25-mile-per-hour zone was \$49. We kept the fine at \$49 because we did not want to hit \$50. If it hit \$50, the administrative assessment fees were increased, which was too punitive for such a minor infraction. The total fine of \$49 plus the administrative assessment fees was \$64 in 1995. I have not increased the fine, which is still \$49 for 35 miles per hour in a 25-mile-per-hour zone. Offenders now pay \$91. This is difficult to explain to people. When they ask, I tell them the fine has not increased in the last 13 years; legislatively, we have increased administrative assessment fees. Oddly enough, this used to be called a penalty assessment in California. For every dollar in fines in California, there is a \$2.79 administrative assessment fee; therefore, a \$100 fine costs \$379.

Judge Dahl briefly discussed the budget process. Whenever we increase fines, a dollar or two goes to justice courts, and they are told they will be able to get more money. That is not accurate. Local governments, for the most part, have done away with the capital improvement or capital expenditure budget for courts and subsidized it with administrative assessment money, but we do not have any more money. They fund salaries, retirement and the services and supplies budget. For example, if we want to upgrade computers and tie them into the AOC, Department of Motor Vehicles, jail or district attorney, we are told we have administrative assessment money and it will not be funded. If I want a new chair, I am told to take it out of administrative assessment money. Judge Dahl is correct. If I want a new chair, I must impose a fine to get administrative assessment money so I can buy the chair. That is not right.

We deal with a concept in government called the appearance of impropriety. It is frequently mentioned regarding judicial canons, attorneys, the legislative body and the Executive Branch. This issue has the appearance of impropriety. We went so far a few legislative sessions ago to say if a judge performs a marriage, the fee is increased. The fee was raised from \$35 to \$50, but \$5 is allotted to Advocates to End Domestic Violence. A separate set of books is kept to indicate the money collected and sent to them, and the books can be inspected by the Advocates to End Domestic Violence.

Nobody opposes assistance; however, here is the nexus. We now say people who marry will fund and support those who are battered when it is not necessarily married people who do the battering. In essence, if people get married, they are penalized by supporting those who are battered. That is a horrible concept.

I feel like the fellow who jumped out of a ten-story building and somebody asked him halfway down how it was going and he answered, "So far, so good." We are going to hit the sidewalk soon and cannot keep funding in this fashion.

KEVIN HIGGINS (Sparks Township Justice Court, Department 2, Washoe County): I will add Assembly Bill 99 to your list of administrative assessments, which I testified against last week in the Assembly.

ASSEMBLY BILL 99: Makes various changes concerning genetic marker testing of certain persons. (BDR 14-288)

A dollar administrative assessment to fund deoxyribonucleic acid (DNA) testing for all felons in Nevada is yet another added fee. For the most part, we are not opposed to the public policies involved; we are opposed to the funding mechanism. A lady testified last week the murderer of her daughter had been caught due to DNA funding in New Mexico. I was there to testify that Nevada could not afford it.

Many years ago, justices of the peace were paid on the number of warrants they issued. They received a \$25 warrant fee for every one issued; justices of the peace issued many warrants. Subsequently, the U.S. Supreme Court said a magistrate is not neutral and detached if paid on the number of warrants issued, and the justices of the peace had to stop. In a sense, we are back in that position because we fund the court system through collected funds. It is sometimes difficult to explain to the average Hollywood-stop person why, in addition to the fine, they are paying \$7 to the drug court, \$10 to build a new building and most of the other administrative assessments go elsewhere.

There is a thin line between administrative assessments and taxes. The Nevada Supreme Court in *McKay v. City of Las Vegas*, 106 Nev. 203 (1990), indicated as long as the fees go for general improvement of the court system, it is an administrative assessment; beyond that, it is a tax. Courts are not, and should not be, charged with collecting taxes. Essentially, over the years, we have been put in that position.

In the interest of fair disclosure, I was the Deputy Attorney General who testified what a great thing it would be to fund the Nevada Advisory Council for Prosecuting Attorneys with administrative assessments. Although I cannot speak for the Attorney General, it looked like a good revenue source because of

the money turned back into the General Fund without being used. The only way to get some specialty programs funded was to do it. The courts have been forced into it. There is no revenue source for the General Fund, but we can continue adding to this. We will get to the point where the house of cards will tumble down and programs that need funding will suffer because of what has happened with administrative assessments.

JOHN TATRO (Municipal Court Judge, Justice Court II, Carson City):

Judge Robey Willis and I are a two-judge court that has not raised fines in over six years. Six years ago, we raised fines a couple dollars. We would have raised fines with money going to the county had administrative assessments not gone up. In 2004, in Carson City with a population of 55,000, we collected \$666,000 in fines and forfeitures and approximately \$466,000 in administrative assessments; of that, \$21,000 went to the juvenile court. In 2005, we collected \$836,000 in fines and forfeitures and \$574,000 in administrative assessments. In 2006, we collected \$804,000 in fines and forfeitures and \$582,000 in administrative assessments. Carson City's budget is hurting; \$582,000 is huge. Every time an offender comes before me, I calculate a fair fine and look at the scale. If I think \$100 is fair, I only fine \$50 because a \$50 fine carries a \$57 administrative assessment. In that event, the county loses \$50.

CHAIR AMODEI:

Judge Higgins, Mr. Wilkinson will contact you for any research that might help the staff with their tasks.

JUDGE HIGGINS:

That will be fine.

CHAIR AMODEI:

The hearing is opened on S.B. 131.

SENATE BILL 131: Makes various changes regarding certain court fees charged and collected by county clerks. (BDR 2-385)

VINSON W. GUTHREAU (Nevada Association of Counties):

It is my pleasure to speak on behalf of S.B. 131. On August 16, 2006, the Nevada Association of Counties (NACO) Board of Directors unanimously passed a comprehensive legislative package to submit to the 2007 Legislative Session

which included S.B. 131. The NACO introduced this bill to offset technology costs associated with upgrades by county clerks. The intent of S.B. 131 is to raise specific fees which are listed in the bill and earmark the additional revenue for technology upgrades.

We are presenting a formal amendment ([Exhibit F](#)) to the Committee regarding the certificate seal. It is currently \$6, and we propose raising it to \$10.

Fees have not been raised for nearly a decade. I provided the Committee with a NACO Bill Draft Executive Summary ([Exhibit G](#)) which further outlines intent of the bill. I also submitted a Comparison of State Fees chart ([Exhibit H](#)).

ALAN GLOVER (Clerk/Recorder, Carson City):

These fees have neither increased for a long time nor kept up with inflation. It is more difficult to fund the courts and get money from county commissioners. This bill is needed to help fund the court system. Shirley B. Parraguirre and Amy Harvey will speak specifically to the portion requesting the technology fee. In my position as both Clerk and Recorder of Carson City, the Legislature approving the technology fee for recorders was one of the best things that happened to the recorder's office and the people it serves. We have improved our technology forum, which has been a big help. We realize this will not generate the kind of money it did for the recorders, but we need assistance in technology in certain areas of the county clerk offices. We need to support court functions.

In Carson City, with the help of our justices of the peace, former District Judge Michael R. Griffin and present District Judges William A. Maddox and James Todd Russell, we reorganized our court to be more efficient with reduced staff. We are looking for help to fund the administration of our courts through the county general fund.

CHAIR AMODEI:

Senate Bill 131 refers to technology for converting and archiving records. Was any coordination done with the state? I had a brief discussion with Guy Louis Rocha, Acting Administrator, Division of State Library and Archives, Department of Cultural Affairs, regarding a coordinated effort as opposed to 17 separate and distinct entities for archiving. I am not saying it should or should not be done. I want to know whether it was explored.

MR. GLOVER:

We are just getting into those discussions. There are court records that need to be archived as well as all other records counties keep—marriage records in particular. We have been fortunate over the past 15 years to index all marriages that occurred in Ormsby County and Carson City. A myriad of information would help archive and protect people applying for U.S. citizenship. Some records go back to the 1840s. We need to coordinate with the state and, of course, we are always looking for funding.

SHIRLEY B. PARRAGUIRRE (Clerk, Clark County):

I am here to support S.B. 131 insofar as the \$5 technology fee for county clerks upon the filing of notary bonds. The recorder's office received a technology fee some years ago. The district court received a technology fee in 2003. The language in that bill dictated the technology could only be used for district court functions. The county clerk has court clerk and non-court clerk functions. Increasing the fee for notary bonds would provide the county clerk with technology funds for other than district court functions, such as marriage bureau, licensing, the Board of County Commissioners with which we have oversight, fictitious firm names and passports.

We are trying to become computerized in Clark County. Some of the smaller counties do not have as many notary filings as Clark County. Last year, there were 7,001 filings which amounts to \$35,000. That is not a lot of money, but it would help fund our software. It is difficult to get funding from the County because they provide necessary funding to 40-plus departments. This funding would only be applied to users who pay the additional \$5. Comparisons with other states have been set forth. I support the technology fee increase.

DIANA ALBA (Clark County Clerk's Office):

There has been discussion about disconnect between fees collected and the agencies or programs they fund. That is not the case with this particular fee. Those who access the services of the county clerk's office will pay this fee and directly benefit from improved technology in online services and the ability to process more efficiently.

MS. PARRAGUIRRE:

In the 2005 Legislative Session, a bill regarding redaction of social security numbers was not a funded mandate. In that event, Clark County needs technology to redact social security numbers out of marriage licenses, which

will be a huge and costly undertaking. The technology fee would help in that regard.

AMY HARVEY (Clerk, Washoe County):

I agree with Ms. Parraguirre. We are interested in the portion of S.B. 131 that establishes a \$5 notary fee to build a technology fund. I sent a letter to the Committee ([Exhibit I](#)) explaining that for six years, Washoe County has tried to establish a capital improvement project that allows us to tie into the recorders office to streamline the marriage license function. We have been unsuccessful in attempts to receive funding from the County. Even though the \$5 fee will not create much revenue, it is a beginning to help with software. Our customers expect up-to-date technology when filing documents. Technology is moving faster than we can handle. We hope to begin a technology fund only used for the county clerk's office.

NANCY PARENT (Washoe County Clerk's Office):

Citizens expect us to have this information available at our fingertips. The \$5 fee would be helpful in this endeavor.

CHAIR AMODEI:

Mr. George Flint, Chapel of the Bells, have your concerns been adequately addressed? Let the record reflect an affirmative answer.

KATHY A. HARDCASTLE (District Judge, Department 4, Eighth Judicial District):

I am present on behalf of the Second and Eighth Judicial District Courts and the Judicial Council of the State of Nevada. With me is District Court Administrator Chuck Short. We oppose S.B. 131 because it does not delineate between Judicial and Executive Branch functions. In reference to the specific portion regarding the notary public fee, if it is clear county clerks collect the fee within their function as county clerks as it relates to their Executive Branch functions, we have no opposition.

The rest of the bill does not delineate it is county clerks acting in ex officio court clerk capacity or court clerk. In the Second and Eighth Judicial District Courts, the county clerk does not act as court clerk. Senate Bill 131 allows fees to be raised in the various counties which could be utilized for the marriage bureau, passports and fictitious name filings. Their position in providing secretarial and clerical support to the county commission is neither related to judicial function services nor to services for people who file lawsuits or are

being sued and must file an answer. It is not related to the services received or what is paid.

Because S.B. 131 does not clearly delineate between the Executive and Judicial Branch functions, taxing the Judicial Branch function to collect money that supports the Executive Branch function causes us to oppose S.B. 131.

CHAIR AMODEI:

The hearing is closed on S.B. 131 and opened on S.B. 208.

SENATE BILL 208: Makes various changes to provisions governing employees who are summoned to appear for jury duty. (BDR 1-660)

DISTRICT JUDGE HARDCASTLE:

Senate Bill 208 was submitted on behalf of the Second and Eighth Judicial District Courts and the Judicial Council of the State of Nevada. There are jurors who are required by their employer to work a graveyard shift from midnight to 8 a.m. and then be in court by 9 a.m. Sometimes, trials go until 5 p.m., 6 p.m. or 7 p.m., and the employee must be at work by midnight. These jurors are falling asleep during trials.

Usually an employer is understanding and releases the employee from work, but in some instances, the employer is adamant that the employee continue working while serving on the jury. This is not fair to jurors.

We request the law be clarified that when employees are required to perform their duty as jurors, they not be required to work 16- to 18-hour days between work and jury service.

ROBERT R. JENSEN (President, Nevada Trial Lawyers Association):

The Nevada Trial Lawyers Association supports S.B. 208. It places minimal burdens on the employer. I share the concerns of District Judge Hardcastle in Las Vegas. Many jurors have concerns regarding work problems, getting time off and the resulting financial impact of serving on a jury. Anything we can do that is reasonable to lessen the burdens on our citizens participating in the most direct and important aspects of the civil justice system should be applied.

CHAIR AMODEI:

What is the pleasure of the Committee on S.B. 208?

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SENATOR WIENER MOVED TO DO PASS S.B. 208.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CARE AND NOLAN WERE ABSENT
FOR THE VOTE.)

* * * * *

CHAIR AMODEI:

There being no further business to come before the Committee, the hearing is
adjourned at 10:50 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____