MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
March 29, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:09 a.m. on Tuesday, March 29, 2011, 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/76th2011/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; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Nancy Davis, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Graham Galloway, representing Nevada Justice Association
Michael Geeser, Media and Legislative Representative, AAA Nevada
Jesse A. Wadhams, representing the American Insurance Association and Farmers Insurance
Lisa Foster, representing Allstate Insurance and American Family Insurance
Peter Krueger, representing Nevada Petroleum Marketers and Convenience Store Association
Erin McMullen, representing the Las Vegas Chamber of Commerce
Lea Tauchen, Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada and representing the Reno Sparks Chamber of Commerce
Constance Brooks, Senior Management Analyst, Administrative Services, County Manager, Clark County
Bob Faiss, Adjunct Professor for Gaming Law, William S. Boyd School of Law, University of Nevada, Las Vegas
Kirk Homeyer, Private Citizen, Las Vegas, Nevada
Alicia Monroe, Private Citizen, Las Vegas, Nevada
Vincent Vitatoe, Private Citizen, Las Vegas, Nevada
Michael Lafia, Private Citizen, Las Vegas, Nevada
Jaime E. Serrano, Jr., Private Citizen, Las Vegas, Nevada
Mark A. Lipparelli, Chairman, State Gaming Control Board
John Tatro, Justice of the Peace, Justice/Municipal Court, Carson City
John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts

Chairman Horne:
[Roll was taken.] Today we have three bills on the agenda. We will start with Assembly Bill 293.

[Assemblyman Ohrenschall assumed the chair and opened the hearing on A.B. 293.]

Assembly Bill 293: Requires a person who owns or controls the premises on which an injury or death allegedly occurred to produce certain evidence under certain circumstances. (BDR 3-1038)

Assemblyman William C. Horne, Clark County Assembly District No. 34:
Before you today is A.B. 293. The purpose of this bill is to provide for a mechanism to allow a plaintiff's attorney to get visual evidence from the premises of an accident that may or may not have occurred on their property prior to the filing of a complaint and possible litigation.

Mr. Galloway is here to testify that there are instances where, if the visual evidence is provided early, an assessment can be made whether or not to file a complaint. For example, a potential client claims there was a bad floor in the MGM Grand Hotel, and he wants to sue them because he fell and broke his hip. You would first send a request letter to the MGM asking for the videotape. You find out that not only is the MGM not at fault, but your client went into the property "three sheets to the wind," walked in the door, fell, and broke his hip. There is no fault here. You are not going to take his case, and probably no other attorney will take his case. Today, you would need to go through a whole drawn-out process, and a lot of expenditure and time, before you could get to that point. That is the purpose of this bill. Mr. Galloway will go into more detail on it.

I would like to point out to the Committee that no one spoke to me in opposition of this bill until this morning. I received a letter yesterday from the National Association of Mutual Insurance Companies (Exhibit C). The second part of that letter states, "Although the Nevada State Legislature may have authority to create or amend laws that pertain to the resolution of tort claim, the Nevada Supreme Court has experience and subject matter expertise as to issues of legal evidence, so they should be granted regulatory deference." We have three branches of government. I do not believe it is a good idea to come here to say that we are not qualified to decide this and we should let someone else do it. I find that offensive.

Lastly, there is a proposed amendment brought by Constance Brooks of Clark County (Exhibit D). I am tentatively okay with the amendment in removing the Transportation Security Administration (TSA) section from this bill. I do have some questions that I will discuss further with Ms. Brooks.

Vice Chairman Ohrenschall:
Thank you, Mr. Chairman. Legislators, lobbyists, and legislative advocates all get very busy. However, this bill was introduced almost two weeks ago. As a courtesy to the sponsor, he should have been made aware of any concerns as

soon as possible. [Vice Chairman Ohrenschall admonished several witnesses for not informing Chairman Horne of their opposition in a timely manner.]

Assemblyman Sherwood:
I was familiar with this bill last week, and tried to do some nonbinding collaborative-mediation between the two parties, because there are some things in this bill that are unprecedented. I understand deference to the Chair, but I also understand that these people are all very busy. People are signed in under opposition. Hopefully, we can have the discussion, and listen to both sides of the argument, without prejudging this bill.

Chairman Horne:
I do not believe at any time I suggested to the Committee that it not hear the arguments of the opposition. This is my fifth term, and I understand how a bill moves through our legislative process. It has always been protocol to find the sponsor of a bill, prior to the hearing, if you are in opposition to that bill. It does not mean we will not hear the opposition. I understand that it is uncomfortable to oppose a legislator's bill. However, you still have the responsibility to go to the sponsor and tell them why you oppose it.

Vice Chairman Ohrenschall:
I agree. This Committee has always encouraged a vigorous debate on every bill, but it is a courtesy to let the sponsor know, as early as possible, if you oppose a bill.

Graham Galloway, representing the Nevada Justice Association:
The purpose of this bill is to address a problem in a very narrow area of the law. As a personal injury attorney, I am often asked to look at cases involving injuries that have occurred on people's property. These are called premises liability cases. It is the typical slip and fall, but it is also more than that. It is parking lot accidents, barroom brawls, and assaults in establishments. In doing our due diligence with prospective clients, and doing our investigation, we look for videotapes or surveillance tapes of the incident. In this day and age, lots of entities, businesses, or premises have security systems. If there is a videotape of the actual incident, we ask to see it to determine if the client or prospective client is correct, whether there is a legitimate case, and whether there is some merit to what the client is saying. Almost universally, 95 percent of the time I am denied the request for a videotape. The reason is that there is no requirement to provide a videotape, and there is no requirement that a prospective defendant assist the plaintiff's counsel. It is a bit frustrating when trying to investigate a case to determine if there is merit to the case or not. When I am denied access to a videotape of an incident, I file a lawsuit, and then

I can get the videotape, photographs, or visual evidence. So, if we are told the videotape will not be produced, there is an automatic lawsuit filed.

In about 10 percent of the situations, a forward-thinking, enlightened premises owner allows me to look at the tape. When I look at the tape, half of the time I find that there is no merit to my potential client's case, or that it will be impossible to prove what the client is saying. Therefore, I go back to the client and tell him that he does not have a case, and should not pursue it.

The goal of this bill, from my perspective, is to assist everyone, not just the plaintiff's attorney. It is to assist everyone in determining whether there should be litigation or not. If you do not pass the bill, there will be litigation. If we are allowed to see videotapes and photographs, it may eliminate a percentage of cases. This bill does not give anyone an advantage. It helps to create a savings for everyone. A few years ago I brought suit against one of the local casinos in Reno. Approximately ten months later, after spending thousands of dollars in litigation expenses on both sides, I discovered the videotape actually exonerated the premises owner. The first thing I said was, "Why did you not show me this tape several months ago?" I would have advised my client not to proceed. We would have saved money, the client would have saved money, the premises owner would have saved money, their insurance company would have saved money, and their attorneys would have not billed so much. Everyone would have saved. This will eliminate a certain number of cases, and we will have less litigation.

The opposition will suggest the exact opposite is true and that this is going to foster and encourage litigation. That is not the purpose of the bill, and the way it is written, that cannot happen. This is not a bill where an attorney can go to a casino and demand to see all their videotapes for the last ten months or ten years to see if he can "fish" for a case. This bill requires the premises owner to provide videotape only with respect to a named client or a named claimant.

To sum this up, this bill will help everyone. No one gets an advantage here, although the opposition is going to say that the plaintiff's counsel is going to obtain some kind of advantage. That is not the case. This will help save everyone litigation expenses, costs, time, and energy. It is a very narrowly drawn bill and applies only to very limited situations.

Vice Chairman Ohrenschall:
Is there any evidence from jurisdictions that have adopted a law like this that the law has resulted in less tort litigation?

Graham Galloway:
I am not aware of any other jurisdiction or any other state adopting anything like this. This is new and has arisen due to the advent of videotape. Currently, I am not aware of anyone that has this law. Assemblyman Sherwood said this is unprecedented, and in some degree it is. It is not unprecedented, however, to require someone to give information pre-litigation. Automobile insurance carriers are required to provide information regarding policy limits pre-litigation if there is an exchange of information, such as medical records. If necessary, we are willing to consider some sort of exchange of information similar to that. We could easily add similar language to this bill, although I do not think it is necessary.

Vice Chairman Ohrenschall:
Is that because it is such a new idea?

Graham Galloway:
Correct.

Vice Chairman Ohrenschall:
If this bill passes, and there is a police investigation, and the videotape is held by the police, how would that work? Would you have to wait until the police are finished with their investigation?

Graham Galloway:
Yes. The Nevada Rules of Civil Procedure presently provide that if there is a criminal investigation, until the criminal prosecution has ended, the civil discovery is stayed.

Assemblyman Frierson:
Often trial lawyers get accused of stuffing their pockets. Typically, a plaintiff's attorney does not get paid unless there is a verdict or a negotiation, and then the plaintiff's attorney receives a percentage of what the plaintiff receives, whereas the defense counsel gets an hourly rate. This bill would actually prevent defense attorneys from being able to rack up as many defense hours if a plaintiff has decided to not pursue a case based on the evidence. Is that correct?

Graham Galloway:
You are exactly on point. We often find that once you file a lawsuit, or get involved in negotiation with entities, and defense counsel is hired, then a third interest comes into play, and it is not necessarily an interest in resolving a case as quickly as possible. Defense counsel sometimes gets in the way of things and creates more of a problem with the process than necessary. The

sole goal of this bill is to ensure everybody saves, not just the defense, and not just the plaintiffs. Cases that lack merit, or cases that we will not be able to prove, go away and are not filed. The way to do that is to allow us to look at the evidence beforehand. If you have an automobile accident, and the Nevada Highway Patrol investigates, takes photographs, and takes statements, you are provided all of that pre-litigation. That is what we are asking for in this bill.

Assemblyman Hammond:
In your testimony you used the term "enlightened." In your opinion, what would make a person "enlightened"? Also, when you go to this "enlightened" person, and you ask for evidence, I think there is a heightened sense of awareness that sometimes a lawyer knows a little bit more about the law than a property owner, which would make the property owner a little guarded. Perhaps if you come forward saying, "I will give you some information, if you give me some," that does not seem like a bad compromise.

Graham Galloway:
Perhaps "enlightened" is not the correct word, but it would be a forward-thinking person, a person who is looking to resolve issues. There are several types of players in this arena. There are the types who look for ways to resolve cases, and there are the game players, who want to hide the ball. That essentially is what happens. When we go up against a property owner, he simply says he is not going to give us the information. He is basically hiding the ball, until we file suit. Then he is required to cooperate. When I said "enlightened," I meant that he should be able to see that if he does not give us the information, we are going to file suit, and then he will have to give it to us. When he does not give it to us, I start to question why. Is he hiding something? Does he want to litigate?

This bill also applies to situations where you are not even suing the premises owner. I recently had a client who was injured in a parking lot. She was a pedestrian in the parking lot of a retail store, and somebody backed into her. The store had a videotape. I asked the store owner if I could have the videotape, or at least look at it, because there was a dispute between the driver of the car and my client as to how the incident occurred. I was told "No." I sent him a letter explaining that we are not even looking at the store; we are not going to sue; and we have no reason to involve you, other than we would like to see your videotape. I was told "No." I do not view that as being "enlightened." I view that as being obstreperous, and being difficult, and asking to be engaged in litigation.

We have come to an understanding with the Peppermill Resort Casino, and it allows us to look at videotapes. If I call down to risk management or security

personnel for that casino and say there is a potential claim, I am allowed to look at the videotape. That casino has come to realize that it is easier and more efficient for us to look at videotapes beforehand. About half of the time when I go down to the Peppermill Resort Casino and look at videotapes, I realize my client does not have a case, or I am never going to be able to prove his case. I then tell my client to go away.

Citifare buses have about 15 cameras on them, and are involved in a lot of different events. We have come to an agreement with Citifare's counsel to look at their videotape for a reported incident. Again, about 50 percent of the time I advise my client not to file a lawsuit. So, being "enlightened," the people at Citifare foresee what is going to happen, and deal with it up front.

Assemblyman Hammond:
If we try to create a system where you give the property owner something so that it is some sort of mutual compromise, and mutually work to determine if the case has merit, what do you think the premises owner might want to get from you?

Graham Galloway:
It can be intimidating when lawyers show up at a person's premises. If someone is not represented, or if someone is not sophisticated, which is one of the issues addressed by the insurers, it is sometimes an unfair situation. When I am dealing with someone who is not sophisticated, the first thing I do is tell him to go talk to his insurance company, or go talk to a lawyer. I try not to take advantage of him. Can we work it out to have a fairer exchange? I think so. I think the auto insurance carriers are a perfect example. We are required to provide an authorization for medical records to the defense, and then we receive the policy limits information. If the people who oppose this bill want to receive medical records in exchange for giving up the videotape, I do not see anything wrong with that. There is precedent for that already. That would be a middle ground position, and I have no opposition to that. In answer to your question, I think that is something we can accommodate and would not be opposed to.

Vice Chairman Ohrenschall:
You said earlier that if the plaintiff's attorney is able to view the videotape earlier and see that there are no grounds for a lawsuit, the lawsuit would not be filed. There would be a savings on the defense counsel side as well. If that happens, as a result of this bill, there will be less costs on both sides. Is it reasonable to believe that insurance premiums might go down, and that people might actually save money?

Graham Galloway:
It would be reasonable to make that assumption, although in this day and age, it is rare to see insurance premiums ever going down. My understanding of the insurance business is if you have multiple claims, and multiple litigations, your insurance rates will go up. If you have fewer claims, in theory your insurance premiums should go down.

Vice Chairman Ohrenschall:
So this bill may actually save everyone money.

Graham Galloway:
That is the sole intent of this bill. Personally, I would save myself money, time, and energy. By passing this bill, everybody saves.

Assemblyman Brooks:
I certainly appreciate the testimony today. I think there is a reason why we have a process, and I think that should be respected. With all due respect, those of us who are newly elected legislators probably should sit back and learn from those who are more experienced. I have read this bill on NELIS, and I have two concerns. The first concern is that if someone goes into a hotel and slips on a banana, falls, and breaks his arm, this bill would allow the lawyer to then take a look at the videotape, and determine whether or not to pursue this case. If the videotape shows the guy actually walked in, and did not slip on a banana, the lawyer can see that there is not a case, and not pursue a lawsuit. Correct?

Graham Galloway:
That is correct.

Assemblyman Brooks:
If, in fact, he did slip on the banana, does this give you ammunition to go after the business owner more vehemently, and seek $20,000 to settle, as opposed to $5,000?

Graham Galloway:
Yes and no. It is difficult to answer that. Yes, the videotape reinforces your position. It gives you certainty that your client is right, but it does not mean you can ask for more money. A case has a value, no matter how wrong the other side is or how right you are. Every case has a value, and just because you have a videotape does not mean the case is worth more money.

Assemblyman Brooks:
So, you are going to get this evidence anyway. You just have to put up money in order to get it, correct?

Graham Galloway:
That is correct, and that is what we are trying to eliminate. I have been in a situation where I filed suit on behalf of a client, only to find out that what he said was not accurate, and was not supportable. I have wasted filing fees and service of process fees, the defense counsel is involved, and I am doing discovery, spending money on depositions, and spending thousands of dollars needlessly.

Assemblyman Brooks:
When you can ask for this information, and it is given to you, do you put a price tag on that case then, or do you go in with an established price before you get the videotape evidence?

Graham Galloway:
Usually at the beginning of the case, you have no idea what the case is worth. The client is still being treated medically. Once a client is done with treatment, then you put a value on the case. Sometimes you receive a case that you can put a value on when you receive it. The fact that you have a videotape helps the presentation, but it does not change the value of the case. The person's injury is always going to be worth a certain amount of dollars, whether you have the videotape or not, unless there is a dispute on liability. If you are not sure you can prove a case because you do not have sufficient evidence, perhaps you will have to discount what the case is worth. Then, for negotiation purposes, you have to adjust your values.

Assemblyman Brooks:
Can there be abuse with this particular law by attorneys? What I am gathering is that there is a value of the case, and that leaves no ability for abuse by attorneys to engage in a practice that would force the defendant into an early settlement.

Graham Galloway:
I do not see this bill creating any ability for abuse by anyone. If it is an assault situation, and you have videotape, such as the Rodney King situation years ago, that videotape actually potentially increases the value of the case. However, that is because of the actions that are shown on the videotape, not because of the videotape. No, there is no potential of abuse by letting attorneys look at the videotape. If the videotape shows the client has a rightful case, you are going to either negotiate the case or file suit. If the client does not have a case, it will never be filed. Again, this is not a moneymaking bill; this is a money saving bill.

Assemblyman Frierson:
I came across a law review article regarding Federal Rule 26. It discussed civil discovery reform. Are you aware of the advances over the past decade of efforts to reform civil discovery rules? The article I came across says that the point of Federal Rule 26, in the development of reform, was to save money and to try to streamline discovery processes in civil cases. Does this bill have anything to do with that Federal Rule?

Graham Galloway:
When I first started practicing, it was the hide the ball approach. Nobody gave anybody anything. Over the years the Supreme Court of Nevada and our Legislature have required much more up-front disclosure. We now have in the Nevada Rules of Civil Procedure what we call an early case conference. Within 30 days of the lawsuit being commenced, both sides have to come to a meeting, and exchange documents. The goal over the years has been to streamline the process, and require parties to produce evidence, without formal request. In the old days, you would have to send request for production, request for submission of interrogatories, et cetera. You filed a lawsuit, and would not have to produce a single document unless it was requested. Now you are required to produce, up front, upon written request, all documents that are relevant, even if these documents help the other side. I would say that this bill is in keeping with the trend to simplify the civil procedure process, and require parties to produce evidence that is relevant to the lawsuit.

Vice Chairman Ohrenschall:
Excellent points. I think we are all glad to see the days of hide the ball are gone.

Assemblyman Sherwood:
My gut says there is something about this bill that seems out of order. We have due process and civil procedure. You file a claim. It is accepted. Then you have discovery, and you get the information you need. We have the Fifth Amendment and the Miranda rights. You get discovery now, even if we do not use it. To your point, if you are "enlightened" and it makes sense, you know your clients, and you can get these things yourself. Why would we completely upend civil procedure? This is the standard. We have been doing this forever. Something about this bill does not feel right, because it is out of order. If it makes sense and saves, for example, Wal-Mart money, then you can get together with Wal-Mart and we do not need to mandate its cooperation by law.

Graham Galloway:
It is out of order. It is unusual. It is forward-thinking. You mentioned the Fifth Amendment and the Miranda rights, which pertain to criminal law. The criminal arena is completely different than the civil arena. There are much stricter rules regarding incrimination that do not apply in the civil arena. You are mixing apples and oranges. It is different, but just because in the old days it was hide the ball, and we have always done it that way, does not mean it is the correct way. That is what Assemblyman Frierson was talking about. Over the years we have progressed from hiding the ball to playing ball. This is progress.

Vice Chairman Ohrenschall:
Is any one else in support of the bill? [There was none.]

Assemblyman Horne:
That concludes the presentation on this bill.

Vice Chairman Ohrenschall:
Is there anyone in opposition to this bill?

Michael Geeser, Media and Legislative Representative, AAA Nevada:
We do oppose the bill for many of the reasons that you have already heard this morning. Let me give you a scenario. I think a difference needs to be made when talking about what is fair, and how this should all play out. On one hand, we are talking about what happens when someone falls in a restaurant or hotel. I know if someone fell in a AAA office, not only would we be willing to have someone come over and look at the videotape, but in doing so we would be providing them with an attorney, or an office manager, or perhaps someone from our loss prevention department. Flip the coin. If somebody were to call me, as a homeowner, and say, "I am Mr. Galloway, and I would like to see the videotape you have of your home," in that case I do not have a loss prevention supervisor. I am the manager, and I am not an attorney. You can see the inequity and the uneven playing field that is being set up. We are talking about two different things in one bill. Mr. Galloway says that the unsophisticated homeowner will be told that he should talk to someone. Well, I am the unsophisticated homeowner. I think we are setting up a real inequity when we try to circumvent what is already in the law. For those reasons, we oppose this bill, simply for the uneven playing field that gets set up.

Vice Chairman Ohrenschall:
Thank you. Do you have video cameras at your home?

Michael Geeser:
I actually do have video cameras.

Vice Chairman Ohrenschall:
Well, you are an outlier because I do not. I do not imagine many of us do have video cameras rolling all the time at our homes. I am not sure I see the point in your example.

Michael Geeser:
What if someone were to approach me and say, "We think someone fell at your home. May we see your video?" I am not an attorney. I do not know what to give him. I do not know which camera he wants to see. The way it works is, if you want something of mine, you have to subpoena me for it. My first question would be, "Are you suing me?" That is not the way the law works, nor should it be.

Vice Chairman Ohrenschall:
Suppose you invited me over for dinner, and I slipped and fell. Two days later you get a letter from my attorney asking to look at the video you have rolling at your house. Would you not call your homeowners' insurance, let them know that this is happening, and get the benefit of counsel on your side?

Michael Geeser:
I suppose I could, but that is assuming I know to do that. Are you telling me that I am able to do that? Is someone counseling me that I could do that? That is not in the bill. It was said in testimony that is what the unsophisticated homeowner is told to do, but that is assuming he is actually told that, or that the homeowner knows what the next step is. Homeowners do not have an attorney representing them.

Vice Chairman Ohrenschall:
Well, you have homeowners' insurance, and video cameras rolling 24 hours a day. That seems pretty sophisticated to me.

Assemblyman Frierson:
Mr. Geeser, would you oppose language that requires a request be made first? That before someone demands a videotape, a request must be made to view it. Would that alleviate your concerns?

Michael Geeser:
I think that is the way the law works now. A request is made either by subpoena or some other legal action, as opposed to a phone call saying, "Hand over what you have." That is not the way it should work. If someone were to make a formal legal request, that alerts the defendant that some action is taking place. There should be an opportunity to call the insurance company, retain counsel, or defend oneself in some other way.

Assemblyman Frierson:
Would you oppose this bill if there were language requiring that a request be made first, and if the request is not granted, some other process would go forward? Also, since you mentioned being represented by counsel, if there were language that required the request be made to those entities that are represented by counsel, would you still be opposed?

Michael Geeser:
For clarification, when you say request, are you referring to a subpoena?

Assemblyman Frierson:
I am not. I think the point of the bill is to avoid extra litigation. Of course, a complaint would yield a response, but a pre-complaint process could require you to make the initial request in writing, like a demand letter. Demand letters are prior to a lawsuit. Presumably people are not retained yet, people are not racking up legal fees, or hourly fees. If that is your concern, would your concern be alleviated if there were a requirement that, before this goes into effect, there be an initial demand letter or request and that it be made to people represented by counsel?

Michael Geeser:
That is exactly what I am saying. Something formal, such as a request, a demand letter, or preferably a subpoena, since that is the way the law is written, would be amenable.

Assemblyman Hammond:
Currently, there are certain procedures, and you are asked, through subpoena, to give whatever evidence you have. If this becomes law, this would be the same thing. Assemblyman Frierson is correct. It would be nice to have some sort of paper handed to you saying we need your videotape, and this is why. What language would you like to see in that letter? If a request is made for your videotape, what would you like be able to have in return, as far as evidence, from them? Again, we were talking about a mutual exchange. What would you see as being fair?

Michael Geeser:
Speaking more now as a homeowner, I would like to see all of the vital statistics: the who, what, where, when, the time, the day, et cetera. I want all of the information that it would take for me to go back and research what is being asked for. That would be different than getting a phone call from an attorney saying, "Hand over your videotape." At least with the letter format, I am able to conduct some semblance of research, which I am not seeing that I would be able to do now.

Assemblyman Hammond:
Would you like some sort of time frame as well? A time frame of when you have to give the evidence up? Would that make you more comfortable?

Michael Geeser:
Absolutely. That would only be fair, especially if you are talking about a resident who now has to get counsel to defend himself. There has to be some sort of time frame attached to give him time to defend himself.

Assemblyman Hammond:
Regarding "enlightenment," have you ever been asked to give evidence, and has your company ever done that, and avoided any costly litigation?

Michael Geeser:
Speaking on behalf of AAA Nevada, we get asked all the time for evidence of some sort. Whether it is a slip and fall, or something happening in the office, I cannot think of one time where we withheld evidence for any reason. Whether the slip and fall was legitimate or not, it is our duty to provide what is asked for, and we do. I cannot speak for the others here, but that is how AAA Nevada operates.

Assemblywoman Dondero Loop:
I have had this scenario happen, and the very first thing I did was call my homeowners' insurance. I did not have to seek counsel because my homeowners' insurance agent sought counsel for me. You may decide to get another attorney, but I do not know why you would if you have homeowners' insurance. The minute you have a car accident, you call your insurance. You do not go out and get another attorney. I guess in my mind, companies have legal counsel so that when these things happen, those people become your legal counsel. I think we should see all the facts and figures, and then go to the next step. That is why this makes sense to me.

Jesse A. Wadhams, representing the American Insurance Association and Farmers Insurance:
First, I apologize to the Chairman and to all individuals who signed this bill. It was my mistake not to get my concerns in earlier. I have had some conversations with Mr. Galloway and the Nevada Justice Association, and we have been talking about what they are trying to accomplish and will continue to do so. Our concern is essentially the creation of an extrajudicial process for disclosure of potentially damaging evidence. When you have the discovery process in litigation, you essentially have a referee there to look at the evidence, and determine if the probative value may or may not be outweighed by the prejudicial effect. You would have someone as a third-party mediator to

determine whether there is damaging evidence, or prejudicial evidence, that is not being sent out, or is being protected, or, in fact, is being disclosed. We think the discovery process generally works. If there is some progressive way of working toward a new resolution, we might be amenable to that.

Certainly, there are those attorneys who have given our profession a black eye; those are attorneys that would potentially use processes outside the judicial process for nefarious means. I say that about both the defense bar and the plaintiff bar. All sides are guilty, and those of us who are attorneys need to work to rectify that. We think that having the judicial process certainly helps keep things on an even playing field. I am happy to work with the sponsors of the bill and the Nevada Justice Association to see what we can come up with.

Vice Chairman Ohrenschall:
I think we all want a legal process where there is less hiding of the ball.

Assemblyman Sherwood:
As a way of understanding the process now, there is a complaint, the complaint is filed, a response to the complaint is filed, and discovery is conducted. Anything that is asked for, including the probative value, whether it is prejudicial, is all sorted out. Are there any balls being hidden in the current process?

Jesse Wadhams:
The simple answer is that lawyers can, and do, play games. One would hope that they are not; one would hope that the judge is making sure that evidence is provided. Mr. Galloway can probably answer that better than I can. I do not practice civil law in court. I do not believe that one would try to hide the ball, but it certainly could happen.

Assemblywoman Diaz:
What language makes the companies you are representing uncomfortable with the bill as it is currently written? You mentioned you will try to work with the trial lawyers and the sponsors with the language. I did not hear specifically what is making you uncomfortable.

Jesse Wadhams:
There are a couple of components that are written fairly broadly. Section 1, subsection 1, states that ". . . . a claim is asserted for compensation or damages . . . ." Then it specifies who the claimant is. I do not do civil practice, but as I understand it, you can have any claimant, potentially even a John Doe, and assert a claim for compensation. That is nearly any kind of claim. The other component is in section 1, subsection 1, on page 2, line 3:

"visual evidence." That does not contain a lot of limits on it either. Does it put an affirmative duty on me to take pictures of a potential site, before or after the alleged incident? What are the limits on that? Do I now have to have cameras? This is some very broad language that I think would need to be limited.

Lisa Foster, representing Allstate Insurance and American Family Insurance:
Both Allstate Insurance and American Family Insurance are opposed to this bill. To reiterate a few points, I feel this bill could adversely impact efforts to resolve a potential case, by creating an incentive for plaintiff attorneys to pressure a naïve or disadvantaged person to disclose information that might later be used against him. Also, there is a concern with the broadness of the language concerning visual evidence, that perhaps photos would be demanded after the fact. Photos would need to be taken after the fact. Those could also be used to prove you are at fault, when it may not be relevant. My clients also feel that this could possibly lead to some fraudulent situations, and they have some great concerns about that.

Assemblyman Kite:
For basic property and casualty policies, do you not have a subrogation clause, home and auto, basically saying that if you have a claim against you that you are subrogating your defense to the insurance company? Does that not take away the unsophisticated party?

Jesse Wadhams:
Again, this gets to some of the broad language here. In section 1, subsection 1, at page 2, line 1, regarding the language ". . . under the person's ownership or control," I think you would have to assume that the individual would immediately turn the claim over to either his property casualty insurance company or his homeowners' insurance.

Assemblyman Kite:
The point I was trying to make is after someone has been injured, and has made a trip to the hospital, somewhere along the line the insurance is going to know about it, and the subrogation clause takes over, and now you have your defense. We really are not talking about a homeowners' claim; we are talking about the big property claims. I believe the big business owners have the same subrogation clause, correct?

Jesse Wadhams:
I would have to assume so.

Assemblyman Kite:
So what we are dealing with here is not the unsophisticated member of society. We are talking about the big businesses, where the deep pockets are.

Jesse Wadhams:
I believe that is correct. Again, the bill is written fairly broadly, and it takes out that referee to essentially take a look at the evidence and determine the probative value versus the prejudicial effect. Your point is well taken. Those larger claims would probably go to corporate counsel. Again, that belies some of the broader issues with the bill.

Assemblyman Hansen:
Section 1, subsection 2 of the bill says, "This section does not apply if the claimant has commenced a civil action against the person who owns or controls the premises. . . ." Why remove that after a civil action, yet insist on it before a civil action would commence? It seems that if you are going to say everybody on both sides is trying to come to a consensus, why would you then remove that clause after a civil action has started? Obviously, at that point, it is considered damaging, but apparently it is not considered damaging prior to commencement of the civil action. Why would that be removed?

Lisa Foster:
In listening to Mr. Galloway's testimony, it appears that there is an attempt to get the information prior to trial, and before a lawsuit is filed. I think the intent is to look at not filing a lawsuit. That is probably why it is in there.

Peter Krueger, representing Nevada Petroleum Marketers and Convenience Store Association:
I am here today representing the convenience store industry, not homeowners. I would like to address what small business owners are concerned about in the bill. One concern is the language that essentially ". . . any premises under the person's ownership or control . . . ." The person who is the owner is obviously a very specific person. The words "who . . . controls" raises great concerns among our industry, in the sense that it could mean a manager, a clerk, or any employee who happens to be there when the request is made. This person may not be knowledgeable enough regarding policies, and simply turn over the particular evidence that is being requested. Secondly, of great concern is that the bill, in our judgment, does not specify viewing the videotape versus taking possession of the videotape. As I read this bill, the demand could be made to take possession, which is, in our mind, much different than sitting down in the business with the business controller and visually seeing the tape, not physically taking the tape away to the plaintiff's attorney. Those are two rather large concerns of our association. We believe that the system is adversarial. It has

always been adversarial, and we believe that it should continue to be adversarial. This makes both sides do their due diligence, do their work, prepare for the case. We think that a business is making a judgment as to whether they are enlightened. In other words, whether it is in the business' best interest to provide this information needs to be a business decision, just as any other activity that occurs in a business.

As to the value of a case, I listened with great interest to Mr. Galloway tell us how the value of a case is determined. I do not believe that his explanation goes quite far enough in determining how the trial bar determines the value of a case. We are absolutely opposed to this bill as written. We are willing to meet with the sponsors of this bill, and see if we can come to some agreement. This is extraordinary; no one else does this. In this time and place, I cannot see why Nevada needs to be the poster child for "enlightenment."

Assemblyman Sherwood:
I am looking at this bill. It is only 16 lines long. The feeling that I am getting is that we are not talking about language but about principle. [He read the entire bill.] This is not a question about language. This is a question about due process being "put on its head." Now, we are granting subpoena power to an attorney, and he then gets to judge the evidence. Why would we, in any practice of law, civil or criminal, go outside the law? This is unprecedented; this is not language that can be negotiated. Am I missing that?

Peter Krueger:
I believe that is the problem with the bill. It is extraordinary. It changes, in our judgment, the idea of the adversarial nature, and the needed adversarial nature, of this process. Will it save money? The other side says "Yes," and using his numbers, it will result in 50 percent of the claims never being processed. I think that is admirable. I would like to see the entire trial bar state that, as a matter of principle, we will see a 50 percent reduction in cases processed if this should become law.

Assemblyman Frierson:
I wish we had an opportunity to talk before today, because I am stumbling across things that I do not entirely grasp. But to the notion that this is completely unprecedented and unheard of, in 2007, Pennsylvania considered pre-complaint discovery, allowing for a plaintiff to obtain pre-complaint discovery where the information sought is material and necessary to the filing of a complaint, and discovery will not cause unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party. It seems to me that this has at least been considered before. I would encourage

people to look at ways we can address this in a manner that is not overly harassing or burdensome, but allows for the avoidance of unnecessary claims.

Vice Chairman Ohrenschall:
That is a very good point. Even if that was not the case, it is within our power as a Legislature to try to reform the civil process, to make it more fair and more expedient to both sides.

Erin McMullen, representing the Las Vegas Chamber of Commerce:
Many of our concerns have already been addressed by the other speakers. Our main concern with this bill is that it is overly broad as currently written. On page 2, line 2, where it states ". . . provide to the claimant or any attorney representing the claimant copies of any visual evidence pertaining to the claim." That is not limited in scope, or in any way, as to what they must provide. It suggests that if it is not what the claimant or the attorney thought he was looking for in the first place, he can come back and ask for more. There really is no limit to what can be asked for. It could be a certain time frame, or anything that is pertaining to the claim. That is our biggest concern for the business owners. That also creates some privacy concerns about what evidence is turned over, and what is the type of the business. I now have a better understanding of the intent of the bill, and realize it is an attempted cost saving measure. I feel that maybe we should take a closer look. I do not want in any way for this to circumvent our well established civil procedure processes that we already have in place, such as discovery and subpoenas when the claim is actually filed. I do not want this to be an added expense for businesses if they have to consult an attorney or someone else in determining what should and should not be provided. I will be happy to work with all concerned to see if there is a compromise.

Vice Chairman Ohrenschall:
Are there any questions? [There were none.]

Lea Tauchen, Director of Government Affairs, Grocery and General Merchandise, Retail Association of Nevada and representing the Reno Sparks Chamber of Commerce:
I would like to share the concerns of the speakers that have come before me, and also address that our primary concern is that this bill would open the door to fishing expeditions, if someone wanted to obtain sensitive information about how a company conducts its business. If litigation does proceed, then this visible evidence will be discoverable. Our members do not want to be forced to provide their private property before that step in the process. Our members would prefer that the process remain as is.

Vice Chairman Ohrenschall:
It was brought out earlier that this might actually save the defendant money, because the lawsuit may not be filed. Do you think that potentially your clients may save money?

Lea Tauchen:
I do have a better understanding of the bill, having heard the proponent's testimony, and I will share that with our members.

Assemblyman Daly:
We have heard repeated testimony that this bill is unusual, and it is not done anyplace else. It occurs to me, as I go through my regular job, representing workers from the laborers' union, this is standard operating procedure and law under the National Labor Relations Act. If someone comes to me and says they have a problem under the Act, a letter is written to the employer, asking the employer to give us the information and determine if the bargaining agreements have been applied properly. The employer is required, under federal law, to give the information to us. This is not unprecedented.

Vice Chairman Ohrenschall:
Does anyone else opposed wish to speak? Is there anyone neutral to A.B. 293?

Constance Brooks, Senior Management Analyst, Administrative Services, County Manager, Clark County:
Clark County has 38 departments, one of which is the Department of Aviation, otherwise known as McCarran International Airport. As a result we have a mandated relationship with the TSA. Certain visual evidence that is referenced in A.B. 293 falls under federal regulations that would be considered sensitive security information. This is governed in Federal Regulations, at 49 CFR, sections 1520.1 through 1520.7. Under this regulation, we are obligated, as airport operators, to govern the release of information in accordance with this Act. As a result, we are asking for an exemption for sensitive security information, that is, visually evidenced information, to be exempted from this bill. I spoke to the sponsor and addressed some of the concerns with this bill.

Vice Chairman Ohrenschall:
Why did the United States Department of Homeland Security or the Federal Aviation Administration not come forward directly with these concerns? Is it normal that these agencies come through the county?

Constance Brooks:
We are considered the airport operator. It is standard procedure that local jurisdictions are responsible, and deemed as airport operators, and we, as

lobbyists, deliver that message on their behalf. Otherwise, those agencies would have to send someone from Washington, D.C., to address this concern. On their behalf, and as our obligation as airport operators, we are delivering this message.

Vice Chairman Ohrenschall:
Is there anyone else wishing to speak? [There was none.] I will close the hearing on A.B. 293. I will now open the hearing on Assembly Bill 213.

Assembly Bill 213: Makes various changes relating to gaming. (BDR 41-163)

Bob Faiss, Adjunct Professor for Gaming Law, William S. Boyd School of Law, University of Nevada, Las Vegas:
Brin Gibson, our Gaming Law Studies Coordinator, is with you in Carson City. We are here with student leaders of the Legislative Advocacy Group of the Boyd School of Law Gaming Law Studies Program. This is my tenth anniversary with the law school's legislative advocacy endeavor, and it is made special because we appear before a Committee whose Chairman and Vice Chairman are stellar graduates of the Boyd School of Law. We thank Chairman Horne for making A.B. 213 a reality. We greatly appreciate the support and guidance the students were given throughout by the Nevada Gaming Control Board Chairman, Mark Lipparelli. Important parts of the Nevada Gaming Control Act exist because of the Boyd School of Law student initiatives, such as this, over the past ten years. We hope these law students before you will persuade you to continue that tradition with the adoption of A.B. 213. The student team captain, Kirk Homeyer, will open their presentation.

Vice Chairman Ohrenschall:
Thank you, Professor Faiss. It is an honor to have you before this Committee. I appreciate your comments. Any questions? [There were none.]

Kirk Homeyer, Private Citizen, Las Vegas, Nevada:
Thank you for accepting the recommendations for A.B. 213 from the gaming law students of the Boyd School of Law and for allowing our student team to testify in support of it this morning. [Read from written testimony (Exhibit E).]

Alicia Monroe, Private Citizen, Las Vegas, Nevada:
The draft of this bill was requested by Bernie Anderson, the former Chairman of the Committee, and a strong supporter of the Boyd School of Law gaming law program. [Continued to read from written testimony (Exhibit E).]

Vincent Vitatoe, Private Citizen, Las Vegas, Nevada:
Good morning, Chairman Horne, and members of the Judiciary Committee. I am here to explain section 1 of A.B. 213. In order to apply for a gaming license or a finding of suitability, persons must have an existing involvement with the gaming industry or an agreement that gives them a right to such involvement. Section 1 authorizes the Nevada Gaming Commission to adopt regulations that will allow persons without such involvement or right to apply for a preliminary finding of suitability. Such a preliminary finding would attest to a person's general suitability but not grant that person any involvement in the gaming industry. [Continued to read from written testimony (Exhibit E).]

Michael Lafia, Private Citizen, Las Vegas, Nevada:
I am here to introduce section 2 of A. B. 213. [Read from written testimony (Exhibit E).] Our bill would amend NRS 463.310 subsection 2 to clearly provide that the Gaming Control Board may file a complaint for which it believes a fine is necessary. [Continued to read from written testimony (Exhibit E).]

Vice Chairman Ohrenschall:
Does the Nevada Gaming Control Board currently have the authority to impose a fine, or will this bill give them authority that they do not already have?

Jaime E. Serrano, Jr., Private Citizen, Las Vegas, Nevada:
The Nevada Gaming Control Board has the authority now. However, the previous language was a little ambiguous. It could have been read to obligate the Board to make a finding before imposing the fine. Section 2 of the bill matches language that is already in the act.

Mark A. Lipparelli, Chairman, State Gaming Control Board:
I would like to take this opportunity to address the Committee. It is not often, as an agency head, that I take a position for or against bills. This issue was a question that came up in a conversation that I had with Bob Faiss about a challenge that we were facing as an agency with people who were looking for suitability requirements. I expressed to him that I thought this would be a great challenge for the law students to come up with modified language that would address these concerns. I think the law students have done an outstanding job, and I give them great credit. In this case, I fully support the language they created. I think it will be a benefit to the state. To give you some perspective, the combined market capitalization of the two companies that went through the investigative process is in excess of $3 billion. These are significant companies that could have significant financial investment opportunities in the state. It is not lost on me, as a person who sits as Chair, to understand that there are others out there who may have a long-term interest in the State of Nevada. Giving them a mechanism to navigate their way through what can sometimes

be a very lengthy investigative process is in keeping with what we have done historically in trying to attract capital and new entrants to the marketplace.

Assemblyman Hammond:
There is a fiscal note attached to this. Can you tell us why it is attached to the bill?

Jaime Serrano:
The fiscal note is a very small amount, $15,000. Anyone who has been through the process knows that attorney fees are much more than that. From what I have been able to surmise, that is probably an administrative one-time start-up fee. As applicants use this new mechanism, I would presume there would be fees to offset that $15,000. The fiscal effect should be nominal.

Assemblyman Hammond:
When we are finished with this bill, will it be going to the Ways and Means Committee?

Vice Chairman Ohrenschall:
The Legal Division is saying the bill will not be going to the Ways and Means Committee. The revenue it will produce will probably counterbalance the fiscal note. Any other questions? [There were none.] Thank you all very much. Is anyone in opposition to this bill? Anyone neutral? [There were none.] I will close the hearing on A.B. 213. I will open the hearing on Assembly Bill 261.

Assembly Bill 261: Increases the monetary limit in actions for small claims adjudicated in a justice court. (BDR 6-1029)

Assemblyman Ira Hansen, Assembly District No. 32:
This bill is changing the amount that a person can pursue in small claims court. Since 1999, the amount has been $5,000. I introduced this bill asking for $9,000, but after meeting with the Nevada Judges of Limited Jurisdiction, that organization recommended $7,500 (Exhibit F). They also recommended that we change the filing fees, which are currently $65, to $125. By multiplying the $5,000 by the consumer price index, it would place the small claims court limit right around $7,000. We really are not doing anything very controversial here. This is the people's court. The idea is to try to keep this very simple and straightforward in small claims court, without involving attorneys. This will allow ordinary folks and businesses to resolve simple disputes by having a little higher limit on the cap, which was set previously in 1999. We are just adjusting it upward.

John Tatro, Justice of the Peace, Justice/Municipal Court, Carson City:
We support this bill, as amended. We felt that going to the $9,000 limit was getting into an area approaching the jurisdiction for district courts, which is over $10,000. We felt it was important to have the rules of evidence apply as in a formal civil action, and to be able to get discovery, and not allow hearsay. We also looked at some neighboring states. In Oregon the small claims court limit is $7,500; Idaho is $5,000; California is $7,500; Utah is $10,000; Washington is $5,000; and Arizona is $2,500.

John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts:
I have a chart that shows the small claims court limits for all the states and the District of Columbia that I could provide to Committee. [The chart was not provided during the meeting as an exhibit.]

Vice Chairman Ohrenschall:
Are there any questions? Is there anyone here in support of the bill? Anyone opposed to the bill? Anyone neutral? [There were none.] I will close the hearing on A.B. 261 and bring it back to the Committee. We are adjourned [at 9:55 a.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 29, 2011 Time of Meeting: 8:09 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 293	C	National Association of Mutual Insurance Companies	Written Testimony
A.B. 293	D	Constance Brooks, Clark County	Proposed Amendment
A.B. 213	E	Boyd School of Law gaming law students	Written Testimony
A.B. 261	F	Nevada Judges of Limited Jurisdiction	Proposed Amendment