

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

**Seventy-Eighth Session
March 25, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Wednesday, March 25, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42
Assemblyman Harvey Munford, Assembly District No. 6

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Nancy Davis, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Gil Lopez, Nevada Hispanic Legislative Caucus Extern
Diana Foley, Nevada Securities Administrator, Securities Division,
Office of the Secretary of State
Raj Tumber, Certified Business Mentor, SCORE, Las Vegas, Nevada
Ken Evans, President, Urban Chamber of Commerce, Las Vegas, Nevada
Peter Guzman, President, Valley Center Opportunity Zone, Las Vegas,
Nevada
Mike Bindrup, Office of Economic Development, University of Nevada,
Las Vegas
Tonja Brown, Private Citizen, Carson City, Nevada
Michelle Ravell, Private Citizen, Las Vegas, Nevada
Steve Yeager, representing the Clark County Public Defender's Office
Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's
Office
Andres Moses, Staff Attorney, Eighth Judicial District Court
John T. Jones, Jr., representing the Nevada District Attorneys
Association
Kristin Erickson, representing the Nevada District Attorneys Association
Consuelo McCuin, Private Citizen, Las Vegas, Nevada

Chairman Hansen:

[Roll was taken and Committee protocols were reviewed.] We will not be
hearing Assembly Bill 260 today. I will now open the hearing for
Assembly Bill 258.

Assembly Bill 258: Exempts certain offers or sales of securities from registration requirements for securities. (BDR 7-700)

Assemblywoman Irene Bustamante Adams, Assembly District No. 42:

I am joined at the table by the Nevada Hispanic Legislative Caucus (NHLC) extern, Gil Lopez, who is a third year student at the Boyd School of Law. The premise of Assembly Bill 258 is to provide another tool in our toolkit in Nevada for small businesses to raise capital. [Continued to read from prepared testimony ([Exhibit C](#)).] Mr. Lopez will now share what other states are doing and also describe how the process works.

Gil Lopez, Nevada Hispanic Legislative Caucus Extern:

I am here to show what other states are doing and, in addition to that, I will talk about how crowdfunding would work in Nevada. I will be referring to the handout that I have provided ([Exhibit D](#)), putting emphasis on pages 2 and 4. Page 2 shows that there are currently about 15 states that have adopted some kind of equity crowdfunding, and there are about 15 states that are in the works; some are in their legislatures. One notable example is Kansas, which passed this in August 2011. Kansas has a cap of \$1 million that any business can raise, and the investment cap for each individual is \$1,000. Georgia and Washington also have crowdfunding. The most recent state is Indiana, which passed in March 2014. Indiana has a \$2 million cap and \$5,000 per investor. As you can see, this is fairly new and is gaining traction with many states.

Page 4 is the flow chart of how crowdfunding would work in Nevada. First, we need to have a company set up a funding platform, a website, or another mechanism that allows interaction. The company has to then hire an escrow agent who handles all the money. Once the escrow agent is hired, the issuer or business owner develops proposals, requirements, and completes any required certifications. From there the company posts the proposal on the funding platform where investors are able to look at it. If the investor likes what he sees, he is then allowed to invest his money by putting it into the escrow account. After the funding goal is reached, the escrow agent will release the money to the issuer. The issuer will then give the investor his share. That is how the equity crowdfunding would work here in Nevada.

Assemblywoman Bustamante Adams:

I will now go through the sections of the bill, starting with section 2. Section 2 defines "accredited investor" for purposes of this bill. [Continued to read from prepared text ([Exhibit E](#)), based on the proposed amendment ([Exhibit F](#)).]

Assemblyman Jones:

I have a technical question. I practiced securities law 20 years ago. I understand Regulation D (Reg D); there is usually no limitation on accredited versus unaccredited investors. This seems very limiting, such as requiring that all the investors have to be in the state of Nevada. I never did a transaction that had all the investors in one state. Also, there are limitations on trying to find out if an investor has already invested \$5,000 in another company. All of these limitations, where did they get created? If I was a company and had to follow these, there is no way I could raise enough money, particularly in a small pool of investors. Where did all these guidelines come from?

Diana Foley, Nevada Securities Administrator, Securities Division, Office of the Secretary of State:

You have raised an excellent background question. Regulation D, Rule 506 offerings is a federal exemption, that is an exemption that is allowed at the federal level. A portion of that exemption preempts state regulation.

Assemblyman Jones:

I am not talking about Reg D, Rule 506, I am referring to Rule 504, which has the \$1 million exemption which allows unlimited, unaccredited investors, if you are \$1 million or less within one year.

Diana Foley:

The important point here is you are talking about a federal exemption. Because crowdfunding implicates federal interstate commerce, it is important that the person who is utilizing this particular exemption comply with federal law so they do not implicate United States Security and Exchange Commission (SEC) regulations. That is why there are so many regulations here, so they comply with Rule 147 and basically offer this particular offering only in the state of Nevada. If they do not comply with that, they will need to fit within one of the federal exemptions. Although the Jumpstart Our Business Startups (JOBS) Act did pass a crowdfunding exemption in 2012, it is not yet law because the SEC has not issued rules on that particular exemption.

Assemblyman Jones:

I was also wondering where you got these guidelines. I understand the JOBS Act has not issued, but any time you do any sales, you have to comply with the federal regulations. This does not make sense; you have to comply with SEC and you also have to comply with the state blue sky laws. The problem is that when every state issues all these rules, it is very hard for a business person to try to follow all the very technical rules in every single jurisdiction. It becomes almost impossible to raise money. Why is this bill being so much more restrictive than just a Reg D type offering?

Diana Foley:

This is not a securities bill, and we are here to answer some of the technical questions on the law. Some of those issues may be something that Assemblywoman Bustamante Adams would like to address. We have made certain requests for amendments to this bill, one of which is the reference to Form D; that is an inaccurate reference. Any issuer utilizing this exemption has no ability to sell in any state other than Nevada. That is what Mr. Lopez testified to. There are about 15 other states that have adopted an intrastate exemption; they are only for offerings that are sold within the state. Many of the restrictions are necessary to make it qualify as an intrastate exemption.

Assemblywoman Bustamante Adams:

In addition, the model legislation that we had discussed was borrowed from Texas, Indiana, and Washington. This is within the state and gives us another opportunity for these small businesses to raise capital. There are already rules for the accredited investors, and this is for the unaccredited investors. This is an additional tool, but is aimed at a smaller group.

Assemblyman Gardner:

This is creating a Reg D, but only for Nevada, correct? Also, do we have any oversight of these offerings? One of the reasons that SEC has not brought out their crowdfunding rules is due to concerns about these companies defrauding their investors. Also, people are creating what they call "zombie companies" where the company does not really do anything and has no chance of making any money, but people are still willing to invest in it. Do we have any way to counteract that?

Diana Foley:

I understand those concerns. They are concerns at both the federal and state level. That is why we have asked for some amendments to this particular provision. There is a registration disclosure statement that the issuer has to provide. They cannot be disqualified under "bad actor" rules. They must identify who owns 10 percent or more of the company. This is a very different way of raising capital. When you talk about Reg D, although there are some abilities to raise capital through Reg D from unaccredited investors, it is primarily an accredited investor provision. You are pointing out some of the concerns and some of the reasons why we have requested the amendment.

Assemblywoman Bustamante Adams:

Consumer protection was our first concern when we were crafting the bill and working very closely with the Nevada Securities Division to ensure that is included. Obviously they would be the regulating entity. We made sure we were not overstepping our boundary.

Assemblyman Nelson:

In section 3, the provision says, at least 80 percent of the net proceeds from the offering will be used in connection with the operations of the issuer in this state. Is that a requirement of the other states' laws that you borrowed this from?

Assemblywoman Bustamante Adams:

Yes, there is some variation. I chose to start at that point.

Diana Foley:

That is also a requirement of Rule 147, which is a federal requirement on whether the offering will qualify for the intrastate exemption under federal law.

Assemblyman Elliot T. Anderson:

I also have a concern about protection for consumers. I think there are probably many good companies that would utilize an equity crowdfunding exemption, but I wonder about the unscrupulous ones. I think a way that might help get toward that goal is to change the amount from \$5,000 to \$1,000 to ensure that someone would not lose a large amount. Is there a specific reason why you chose that amount? That is one of the things that would stop a lot of abuse. I know how people click through the terms and conditions on websites. I feel like many people will not really be sophisticated when reading the terms and conditions.

Assemblywoman Bustamante Adams:

I modelled the legislation after Indiana, and their minimum was set at \$5,000. The highest I have seen this amount is at \$10,000, the lowest was \$1,000. If the Committee wishes, there is room for flexibility in that regard.

Chairman Hansen:

Is the escrow account designed to help prevent abuse? If I invest \$5,000 and the company does not reach the threshold it anticipated, can I recoup my money from the escrow account?

Assemblywoman Bustamante Adams:

That is why we separated from the funding platform having to set up an escrow agent, for that protection.

Diana Foley:

There is also a provision in this bill that would allow the investor, under certain timing restrictions, to withdraw his investments. If the issuer did not reach the offering amount in a specific time frame, or the minimum amount, the investor would be able to withdraw that investment.

Assemblyman Elliot T. Anderson:

Might it be possible to expand the scope of the escrow agent's duties? I see that there is a little protection by requiring the offering to be fully funded, but might it be a good idea to have the escrow agent certify the other requirements of the bill have been met, and have checked off all the boxes before the funds are released?

Diana Foley:

I am not sure it is feasible for the escrow agent. I think that if you are going to require an additional check or verification, you might do it with the website operator. Currently, as written, there is a website operator who has to register with the Securities Division, or a licensed broker-dealer could do this as well. That would be my suggestion if you wanted to increase that protection, it would be the website operator's and issuer's responsibility.

Assemblyman Ohrenschall:

Page 7 of the bill, beginning on line 14 states, "The operator of an Internet website is not required to be licensed as a broker-dealer pursuant to *Nevada Revised Statutes* (NRS) 90.310 if . . . (5) Engage in any other activities that the Administrator determines by regulation are prohibited." What kind of activities do you envision triggering that? Have other states already promulgated regulations like that?

Diana Foley:

I do not have specifics, but one of our concerns is that this is a very new area of the law. That particular section which says they do not have to be registered basically shows that the website operator is not doing anything that is traditionally either in the realm of an investment advisor or in the realm of stockbroker or dealer type activity. They are merely posting information. One of our concerns is that we may get to a point where we require a bonding requirement or some other similar requirement. We are charting new areas and this is one of the areas where we are watching what other states are doing to perhaps make additional appropriate regulations.

Assemblyman Ohrenschall:

If you feel we need a bonding requirement in Nevada, can you do that pursuant to regulations under this proposed legislation?

Diana Foley:

It is my belief that we could do that under this particular legislation.

Assemblyman Gardner:

Do we know what will happen if the SEC does issue their regulations on crowdfunding? Would that preempt us?

Diana Foley:

I do not think it would preempt us on an intrastate exemption. One of our concerns in the Securities Division is that this bill may be slightly different than the federal exemption, once that exemption is operating. The issuers may get confused. There are some slight variations between this bill and the federal exemption once it comes into play. Again, they can both exist. I am not sure this would be necessary once the federal exemption exists.

Assemblywoman Diaz:

What kind of client does this type of investing? I am trying to figure out what the consumer looks like. Have you run across any issues with crowdfunding in the states that have already implemented this?

Diana Foley:

This is a very new exemption, and we are keeping abreast of what is happening in other states. I am unaware of a specific enforcement action regarding a regulated crowdfunding website. There have been enforcement actions in other states where there was crowdfunding that was not regulated and was contrary to the law. The significant thing about this bill, and why there are concerns about this bill, is that you are reaching an audience of individuals who may have little capital to invest. Many of the companies that will be utilizing this particular offering are startups. There is a very high risk that the investor will lose his funds from the normal inability for a startup company to survive. You can reach any kind of investor with this particular type of investment, which is different than prior securities law. Previously, to reach that type of investor, it was done with a registered offering where there was a regulator who had oversight to the offering statement and perhaps there was a broker-dealer who may have been involved who said, this is a suitable investment for you, or you may have invested through an investment advisor. Again, that is the concern, this reaches a very broad group of investors with this particular type of exemption.

Chairman Hansen:

The level of regulation in this bill seems very detailed, almost over-burdensome. Is this going beyond reasonable standards and making it so difficult for a startup company to raise capital, that while sounding good, it may actually defeat the original purpose?

Diana Foley:

Because we are reaching this very unsophisticated, low-income investor, it is very important that there be some basic requirements in the disclosure statements. If you look at the disclosure statements, this is information that clearly the issuer would know. This is not something they need to do research on. They will know what their obligations are, what their profits and losses are, who their shareholders are, the purpose for raising the funds, and how the money will be spent. In the Securities Division, we do not see those as burdensome requirements. There are specific disclosure requirements, and the financial information that they provide must be accurate. We see these regulations as minimally necessary to protect investors.

Chairman Hansen:

You mentioned that you have been investigating other states. Have you found any consistent problems with abuse, or have you noticed any red flags in the other states?

Diana Foley:

Again, this is a very new exemption. The Kansas and Georgia exemptions were not created as a crowdfunding exemption; it was meant to increase business in Kansas and Georgia. What we are seeing is that this exemption is not utilized by a lot of issuers. There could be many reasons for that, including that issuers may prefer to go under Rule 506(c), which is a federal exemption that allows them to generally solicit. It limits their investor pool to accredited investors, but it gives them a much broader base for raising capital. In Indiana there have been about six offerings since that exemption was put into play.

Chairman Hansen:

Is there anyone who would like to testify in support of A.B. 258?

Raj Tumber, Certified Business Mentor, SCORE, Las Vegas, Nevada:

SCORE is a national nonprofit association dedicated to offering business mentoring to small, existing businesses and to individuals who are trying to start a business. I have been with SCORE for six years, and I deal on a day-to-day basis with people who want to start a business. One of the questions that comes up more frequently is, how do I get money to start or grow my business? When I heard about the crowdfunding concept and the intrastate funding, I was all for it. I felt that I needed to be here today to testify in favor of it.

Ken Evans, President, Urban Chamber of Commerce, Las Vegas, Nevada:

I come before you in two capacities. First, officially as the President of the Urban Chamber. I will tell you that within our field of membership, the majority are small businesses: small businesses which have less than two years of

experience. As previously mentioned, quite often they are in need of capital that they cannot get through traditional financial institutions or lenders. Crowdfunding represents a great opportunity to provide them with access to capital. In reviewing some of the language, I would like to say that we support the fact that this bill attempts to provide some legal structure as well as legal protections, without, at the same time, creating an impediment to the ability of smaller businesses to get access to capital.

The other way I would like to discuss this bill is from personal, first-hand knowledge as a past investor as well as someone who, on an ongoing basis, is interested in opportunities like this that would present themselves to an unaccredited investor.

I would like to say that if you reduce the amount from \$5,000 to \$1,000, I think that might be a concern for some investors. You would be surprised that although individuals may not be accredited investors, meaning having a \$1 million net worth, they are very educated in investments. I spent an entire year studying to ensure I was properly educated on investments. I am not alone. There are many people out there looking for business opportunities and business ventures to participate in. I would caution lowering the amount out of a desire to limit people's liability. I think an escrow account to protect and secure the funds until such time as the amount desired to raise has been accomplished is a good protection. I also think the disclosures that were mentioned by Ms. Foley in the realm of education for a potential investor are also a good avenue to protect potential investors. Overall, we at the Urban Chamber support this bill and stand ready to be part of the discussion as we make our way through this effort to provide this type of legislation in alternative financing.

Peter Guzman, President, Valley Center Opportunity Zone, Las Vegas, Nevada:

I am in support of this bill. I commend Assemblywoman Bustamante Adams for continuing her passion to open the avenues for more businesses. I believe this bill offers plenty of protections. I work with small businesses every day, and obviously, capital is the main wall that is preventing going to the next level. Anything that offers opportunity to get more funding, and at the same time offers sufficient protection, in my opinion, I am all for it. I am in support of the bill, and I commend all efforts to provide more avenues for more capital and at the same time offer what I feel is enough protection. I really like the escrow account.

Assemblyman Elliot T. Anderson:

I would like to see very good consumer protections. I think about my experience with reading, or not reading, the iTunes terms. I do not read them,

and I could be agreeing to whatever and I have no clue because I just do not take the time. I have a feeling that someone could get an offering that seems too good to be true. He could click through all of the disclosures and put in his credit card number. What protections in this bill would stop someone from just clicking through. Does the escrow agent certifying that something is fully funded really stop consumers from being fleeced?

Peter Guzman:

Frankly, I do not think you are ever going to be able to provide 100 percent protection. At some point, we all need to be responsible and do our own homework and research. All great companies were a start-up. I do not know how you are going to keep pushing the envelope of protection. I think this bill offers enough protection, and I certainly would give a little more credence to the escrow account because they are bound to do the right thing. I think that does offer enough protection. But at the end of the day, consumers have to do their homework.

Assemblyman Elliot T. Anderson:

I have seen people who have a low education level being abused in my other life working in consumer protection. I have seen the worst of the worst. I would agree with you that you have to look out for yourself, but I have found that there are some very unscrupulous people out there.

Peter Guzman:

In no way am I trying to minimize the work you have done. I am just trying to convey that these types of bills could really help a business succeed and grow.

Chairman Hansen:

If anyone studied my portfolio they would understand the famous maxim about a fool and his money are soon parted.

Ken Evans:

I would like to provide some follow-up based on my personal experience. I will admit there are unscrupulous individuals, but it has been my experience that if you are an individual who has limited assets and someone is asking you to part with some of those assets, if anything, you will be more judicious and more careful. It is harder to get those funds away from you. Having said that, there are unscrupulous individuals you have to deal with, but I would be careful about categorizing everyone who may not be an accredited investor as not being an educated investor.

Mike Bindrup, Office of Economic Development, University of Nevada, Las Vegas:

I run the Nevada Small Business Development Center. I want to lend my support to this bill and thank Assemblywoman Bustamante Adams for her work in supporting the small business community. I think that any access to capital for a small business is a great idea. I think the guidelines that have been put in place by the Secretary of State's Office are adequate for what we are looking for.

Chairman Hansen:

Is there anyone else who would like to testify in favor of this bill? Seeing no one, is there anyone in opposition or neutral to this bill? I see no one. Was the Secretary of State involved in putting this bill together?

Assemblywoman Bustamante Adams:

Yes, I have been working hand in hand with the Secretary of State and the Director of the Securities Division on this bill. I did not move forward without her blessing. I would like to say that my net worth is not at \$1 million yet, so I would be in the unaccredited investor pool, and I know that I would do my due diligence before I parted with any of my money.

Chairman Hansen:

At this time I will close the hearing on A.B. 258. I will take a short recess before we hear the next bill [at 8:47 a.m.].

I will now open the hearing on Assembly Bill 401 [at 8:49 a.m.].

Assembly Bill 401: Authorizes the establishment by district courts of courts of inquiry that may be used to exonerate convicted persons. (BDR 14-101)

Assemblyman Harvey Munford, Assembly District No. 6:

This bill has two parts to it. It has already acquired an amendment ([Exhibit G](#)). I want to totally concentrate on one aspect of this bill. Although I have strong support for the other part of this bill, I do not have the expertise and background to defend it. I will first present to you the part of this bill that I want to emphasize and stress. This is a bill related to corrections. Corrections is something that I have taken a great deal of pride and commitment to. As I mentioned, I represent Assembly District 6. My district is composed in part of what is old west Las Vegas. It is not an affluent area; it is an area that is going through some very hard times. Because of that, many of our residents have family members who are incarcerated in our state correction system. I am not here today to defend the actions of those who break the law and are properly convicted of a crime. We have a representative democracy where

crimes and punishments for committing them are many times openly debated. They are also voted upon and sometimes become law. There are and needs to be consequences for those who do break the law. In cases of felony convictions, a term in Nevada's Department of Corrections (NDOC) is part of the sentence. In many cases an offender may receive a suspended sentence and be granted probation and an opportunity to show the judge that he deserves probation and can become a respected citizen and that he wants society to respect him.

Today, what I want to do is address those situations dealing with parole and probation and some of the incarcerated inmates and those who have been released. Just because a person makes a mistake, even a major one, does not mean the individual has lost the right to voice his concerns. What may seem like a minor worry to those of us on the outside may be deeply troubling to someone whose daily life is largely scripted by others.

When a judge sentences an offender to become an inmate within NDOC, the time served is supposed to be the punishment, which includes the loss of liberty, to come and go as he pleases, the loss of determining what time to eat and sleep, and the ability to make any decisions for himself. The punishment, though, should not include shutting off the ability of an inmate to have reasonable questions answered or reasonable matters investigated by the agency tasked with overseeing his custody.

Many times I have talked to inmates' families and I hear their concerns about their family member while he is incarcerated. Sometimes it appears that the families might compliment the program in the facility, but at the same time, complain a great deal about the programs that are in existence in the facility.

I have taken the time to visit many of the facilities in Nevada. As a matter of fact, I have visited every facility in the state except the Humboldt Conservation Camp in Winnemucca. Since we have been in session, I have been to the Northern Nevada Correctional Center (NNCC) three times to visit inmates. I receive countless letters about complaints and concerns by particular inmates. Since this session began, I have received many phone calls. As mentioned earlier, because of my district, I have taken an interest, a passion, in something that I believe—everyone deserves a second chance. Even though they have made a mistake in life, they still deserve a second chance. They have served their time. So many of these inmates who have spoken with me are over 50 years old and considered lifers, someone given a life sentence without the possibility of parole for a crime that he committed in his teenage years and for which he has already served 30 years. I always felt that when you commit a crime at 17 years old, your rational thinking is something that is not stable

and something that you do not have the ability to make those sound and intelligent decisions. I think that the neighboring states, California, Arizona, and Utah are now starting to look at these inmates and seeing that they should be given the opportunity to maybe have their sentences looked at a little closer. When someone becomes 50-plus, he becomes more of a burden on the system because of the fact that he is more susceptible to medical problems. One of the inmates who is incarcerated now, she has not been there for 30 years, but she has been in for 6 years and she has a medical problem that requires medication that she has to receive at a cost of \$40,000 to the state. Over a period of one year, it is approximately \$400,000. The point I am getting at is there are so many cases and inmates where further incarceration of them is a great expense to the state. I think the state should look at the expense it is incurring when it comes to some of these inmates who are incarcerated.

I wanted to express and expound on a few other things, but I will open up the opportunity for questions.

Assemblyman Elliot T. Anderson:

I am having a hard time with the text of the bill. I heard a lot about checking for innocence and reopening convictions, but this looks more like a preliminary hearing than it does incident to conviction. We already have some processes for habeas types of review. You cannot reopen every issue in a case, but can you point me to the part of the bill that specifically authorizes anyone to open a conviction?

This bill talks about determining whether there is probable cause, which almost seems like a preliminary hearing. I do not see where it says the court has the authority to reopen the conviction and potentially get rid of it.

Chairman Hansen:

That will be handled in the second part of the bill.

Assemblyman Thompson:

I have a question on the proposed amendment, section 11, requesting an interim study.

Assemblyman Munford:

That is not the area I am focusing on. Since I have been a legislator, I have presented many pieces of legislation related to corrections. One thing I did want to present and emphasize is something that has bothered me since 2007. Prior to 2007, legislators were permitted to visit any facility without announcing it. We could come in at our own whim or desire, when we felt it was time to go visit. We did not have to call in advance. In 2007, I made an unannounced

tour of the Florence McClure Women's Correctional Center on Smiley Road. At the time, when I made that visit, I took Reverend Jesse Jackson with me. It appeared in the local media in Las Vegas with the headline "Jackson Takes Tear-jerking Tour of the North Las Vegas Women's Prison." Soon after that tour, the administrators and the director of NDOC implemented a new ruling that in the future we would have to call in advance in order to visit any of the facilities. Currently, whenever I want to visit any of the facilities, I have to make a call to the director and let him know I am planning a visit. When I went out to NNCC, I had to call and let him know I was coming. Out of courtesy, I would notify him. After we adjourn here I could get on the phone and call the warden and say, I am heading to NNCC. I would do that out of courtesy. The new ruling is that I have to call him and give him the date and the time. I always felt that they had something to cover-up, clean-up, or scrub-up before I got there. That is something that has been very disturbing to me since 2007. That is one thing that really disturbed me a great deal. I cannot remember the number of times I have visited facilities around Nevada. I visited the Nevada State Prison three or four times before it closed down. I have made commitments or promises to family members in my district to visit their loved ones. I have always made it a point to do that.

There is a lot more I would like to say in terms of corrections. It is something that I just never turned my back on anyone, whenever the inmates or family members contacted me over the last 12 years of me serving in the Assembly. I have no regrets. Sometimes people feel, in our society, when someone breaks the law, you should lock him up and throw away the key. When you lock him up and throw away the key, you are also throwing away a human being's life if you do not take into consideration that everyone deserves a chance to change. That is why it is called corrections and rehabilitation. You are trying to make the inmate become a very respectable person again where he can return to society and be productive again. The biggest problem right now is reentry. Once he is released, what happens to him? Sometimes there are a lot of delays on releasing inmates. Someone is released, or he has served his sentence and has been paroled, but he cannot leave the facility and he has to stay. There are records to reveal the fact that sometimes someone has had to stay another year because he was too poor and had no family to go to. He had served his time, but he had to return back to the facility because he had nowhere to go. That again is another cost to the state. It costs \$54 a day to incarcerate one inmate. Maybe we could recommend having some type of halfway house in the state where these men and women can go until they find suitable opportunity of employment and various other things. That money could be put into constructing a facility of that nature. There are still a lot of problems. This entire bill has parts of it that I was not informed of. This has caused me to lose a little focus on what we were going to be bringing here.

Chairman Hansen:

Tonja Brown can present her portion of the bill now.

Tonja Brown, Private Citizen, Carson City, Nevada:

As an advocate for the innocent and the inmates, I ask that you please pass Assemblymen Munford's and Moore's A.B. 401 and create this legislation that is long overdue. [Continued to read from prepared testimony ([Exhibit H](#)).]

I believe there should be an amendment to section 3 which states, "At the hearing of a court of inquiry, evidence may be taken orally or by deposition or, at the discretion of the judge, by affidavit. [Continued to read section 3 of Assembly Bill 401.] I think, to sum it up, if we put an amendment in there, something like, "the grand jury will commence and review all evidence and testimony given. The grand jury will submit their findings to the court and if the grand jury finds that the person is factually innocent through DNA, the judge will issue an order for exoneration." I think that could clarify and sum it up.

Assemblyman Ohrenschall:

I appreciate the intent of the bill. I do not know if we have all the mechanics worked out yet. I have been reading the Innocence Project about how the courts of inquiry are used in Texas and other jurisdictions. They are rare, but they are used when a wrongful conviction seems to have occurred. I think whether you are Republican, Democrat, liberal, or conservative, all of us lose sleep at night thinking that someone may be serving time in a correctional institution or possibly facing the ultimate price, the death penalty, and may be wrongly convicted. In that vein, I appreciate the bill. I do not know if the sponsor would be willing to limit to only the courts of inquiry pursuing only wrongful convictions versus what appears to be a much broader authority in the bill as written. It appears that they could almost be secondary prosecutors, and I am not sure that is a role the courts need to take on. If it were limited to just looking at possible wrongful convictions, I think I would have more comfort. Looking at the amendment ([Exhibit G](#)), in section 11 regarding the study for an advisory commission, I think that is a good point. Assemblyman Munford, you and I have talked about the collateral consequences of some of our criminal laws and penalties and our mandatory minimum sentences. I think looking at wrongful convictions and trying to ensure that if there is evidence it has happened, it is important we try to correct it. Even if someone has been convicted and he did his time, there are collateral consequences. I have seen it in juvenile court. You have seen it in talking to people in terms of the kid who does not get to know her parent because he has been incarcerated. The study is great and we do need to look at the collateral consequences of our criminal penalties and our mandatory minimums. My question is, would you be open to

considering limiting these courts of inquiry only to look at possible wrongful convictions rather than becoming secondary prosecutors in our state?

Tonja Brown:

Yes, that is something we could definitely work with. We need to be able to show that we care, that we care for the families and the innocent. Whatever we can do. The wrongful convictions definitely need to be looked at. When you go through the appeals process, for example Mr. Klein had 33 grounds, 21 grounds were still unresolved at the time of his death, still pending in the U.S. Court of Appeals for the Ninth Circuit. Most of those grounds were reversible errors. Also, there is something else that came to mind. North Carolina has set up a commission as well that deals with wrongful convictions. It might be possible to look at their setup.

Assemblyman Jones:

Starting here as a legislator, I really did not pay much attention to criminal law at all; it was not in my wheelhouse, so to speak. I was worried more about business. I had the viewpoint that every criminal claims to be innocent, and we really do not allow people to slip through the cracks. Since I have been here, I have actually started to realize how the justice system can be corrupt, coercive, and misapplied, although the representation is that it is always going to be used in an innocent fashion. I can sympathize with what you are trying to do, but I work better with statistics. We have read a lot about DNA evidence, and in one of your exhibits you state that 35 percent are misidentified during conviction through different types of eyewitness accounts. Do we have any statistics showing what percentage of people are wrongfully convicted? Is the DNA evidence really helping, or is it very rare?

Tonja Brown:

The study and information that I have read shows that approximately 33 to 38 percent of those who have been convicted through eyewitness testimony, such as a live lineup or a photo lineup, are innocent. It is the DNA evidence that is exonerating them. Based on that statistic, not having DNA evidence, eyewitness identification is still high at around 33 percent.

Chairman Hansen:

We have about 13,000 people in the Nevada correctional facilities. Do you have any statistics to show what percentage of them would be considered innocent if they had DNA evidence? Is it 1 percent, less than 1 percent? Certainly not 33 percent.

Tonja Brown:

If we go by the statistics on DNA evidence, using that 13,000 inmates, there are approximately 1,300 who have received life sentences. If you take 10 percent of that, I would assume maybe 130 people.

Assemblyman Ohrenschall:

According to the Innocence Project website, across the United States, there have been 329 exonerations due to new DNA evidence. The average length of time the exonerated person served prior to his exoneration was 14 years.

Assemblyman Nelson:

This says this is a bill about possibly exonerating convicted persons through courts of inquiry. I have read the bill about five times, and I cannot see anywhere in the bill where it mentions exoneration of anything. It seems that the bill, as was mentioned, deals with establishing probable cause and if a court thinks an offense has been committed against the laws of this state. If the purpose is to open a court of inquiry to exonerate people, I think we need to change the language.

Brad Wilkinson, Committee Counsel:

This bill is almost verbatim Texas law. Texas has this procedure and has used it for the purpose of exonerating convicted persons, including persons who are already dead. It is not limited in this bill or in Texas to just exoneration. I know the bill looks confusing because it looks a lot like a grand jury inquiry. It can be used for multiple purposes. Exoneration is one of them, and that is primarily what it is used for in Texas, although there are other situations where you may have a prosecutor in a murder case, for example, who may have acted inappropriately. There was a court of inquiry, and the judge in that case issued an order saying the prosecutor had acted improperly. That was many years after the original case. It is not limited to exoneration, but that is one of the purposes it could be used for. The bill does not speak to any kind of order being ultimately issued, but basically, the way it would work is, after the proceeding is held, the judge would issue an order saying this person is innocent. If it were used for another purpose, like determining whether someone had committed wrongdoing of some sort, an actual crime that could be prosecuted, then the judge would issue an order to that effect. The person could be arrested or referred for prosecution.

Assemblywoman Seaman:

Other than Texas, how many other states have opened this district court of inquiry? Besides your brother, do you have any evidence that our due process system in place right now is inadequate for wrongful convictions?

Tonja Brown:

I know of Texas. North Carolina has established something similar to this. As far as I know that is all there is.

Chairman Hansen:

There is no other state other than Texas.

Assemblywoman Seaman:

Thank you.

Assemblywoman Fiore:

Have we been successful in Nevada with getting the innocent out of jail? What happens when someone is convicted and ten years later is proven innocent? How do we compensate that person for losing ten years of his life, work, and family?

Chairman Hansen:

I think there are processes in law. I will have Mr. Jones come up later to answer those specific questions.

Tonja Brown:

The answer to your first question is no, the laws that I have seen over decades are that an inmate will file a petition for post-conviction or writ of habeas corpus; he will address a certain number of grounds. Then the judge will pick one or two and dismiss the case without really reaching the merits on the case. Those merits are the ones that are reversible. Then it goes through the appeals process. It will go through the Nevada Supreme Court on direct appeal, from there to the federal courts, on to the Ninth Circuit, and then to the U.S. Supreme Court. There are times where the U.S. Supreme Court may or may not want to hear the case. I will tell you, I know of another individual, who has been incarcerated in Nevada for approximately 20 years. There was no fault on the prosecutor; I just think that the law enforcement agent was relatively new, he had never been around a murder, he did not order a coroner, and there were a lot of flaws. Her case is still pending in the federal courts. However, since she is acting as a pro se litigant, she does not have the capability of moving forward with it and it very well may have been dismissed already, because the help that she did have was no longer able to assist her. She is still incarcerated and is also incurring a lot of medical costs.

Chairman Hansen:

Is there anyone here who would like to testify in favor of A.B. 401?

Michelle Ravell, Private Citizen, Las Vegas, Nevada:

I am absolutely for this bill. There have been some very good questions. I am glad to hear everyone speaking about this issue. I have been an advocate for a wrongfully convicted woman for the last 14 years. Yes, there are still people in our system who the laws are not working for. Whether we have DNA testing, that can still be decided in court against the person who wants the testing done. Our laws are not working. This bill, which would provide a court of inquiry for issues that can be brought forward and reviewed, would be a huge step. I also submitted written testimony for the record ([Exhibit I](#)) along with a report titled "Capital Punishment, 2013 – Statistical Tables" ([Exhibit J](#)). To answer the question of how many people were wrongfully convicted in the state of Nevada, the report shows approximately 10.5 percent.

Chairman Hansen:

Thank you. Is there anyone who would like to testify in the neutral position?

Steve Yeager, representing the Clark County Public Defender's Office:

We are here in neutral because we are certainly in support of the idea behind the bill which seems to be to flush out whether there are wrongful convictions and innocent people who are serving time due to what can be, at times, a flawed criminal justice system. I do not have much of an opinion on whether A.B. 401 provides a good mechanism for that. In the research that I have done, it seems like this is used in Texas for exoneration investigations, but I can say that it has not been done without controversy. It is a very heated issue. Sometimes the criticism is that it gets political in nature. I cannot say if the court of inquiry is the right way to do that. An alternative to think about is what North Carolina has. It is essentially a commission on wrongful convictions where folks can go to the commission and make complaints or ask for investigations. In an ideal world such a commission could be set up and have power to either recommend criminal or disciplinary sanctions if there is misconduct in a particular case. That could be a way to address the issue.

To get to some of the questions that were raised, I have no doubt that there are some folks who were wrongfully convicted in our state prisons. I cannot tell you how many, but just as a statistical matter, there have to be some. I know there was a case that came about two or three years ago where there was an individual serving time in our prisons who had actually pled guilty to an offense. It was found out through a DNA test where there was a mix-up in the lab. That individual pled guilty on the advice of his attorney and was thereafter exonerated and released. That is the only one I am aware of. I know there are other cases going through the system where claims of innocence are being made. There are mechanisms in our statutes requiring mandatory DNA testing in certain circumstances, if the offender would pay for it.

In regard to compensation for wrongfully convicted individuals, we do not have in statute any mechanism to compensate folks who are exonerated. Some states do. Typically it is a set amount per year and in order to receive that money the individual would have to waive any civil suit against the state or the prosecuting agency. There has been some talk about looking at putting that in statute in Nevada at some point, but there is no bill that would do that this session. Right now the only remedy would be a civil suit to try to recover any monetary damages.

Chairman Hansen:

I thought there was some process in place, but there is not. We had testimony earlier that approximately 10 percent of the inmates in our prison system are innocent. I would like your opinion on that number.

Steve Yeager:

I looked at that testimony and I think that number comes from a Department of Justice study. That number seems rather high to me. I do not think that I could say that 1300, or 10 percent of our Nevada prison population are factually innocent. At least not entirely, maybe someone is innocent of some of the crimes. Also, keep in mind that in our state, 99.4 percent of our cases negotiate. We have some different ways to look at it. People might negotiate or plead guilty for various reasons whereas we only have about 150 criminal jury trials a year. I think 10 percent is high, but I do think there are a few.

Chairman Hansen:

I guess that would reflect on the public defender's office. The old saying from William Blackstone, "It is better that ten guilty persons escape than that one innocent suffer" applies pretty strongly in our criminal justice system.

Sean Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

We do have mechanisms in place, habeas proceedings and the appellate process to flush out these types of issues. My office recently handled the Kathy Woods matter when she was exonerated pursuant to the DNA evidence. I certainly appreciate the heartfelt words from Assemblyman Munford wanting to get to the bottom of those individuals who they believe have been wrongfully convicted, and I will echo the comments and sentiments by Mr. Yeager.

Assemblyman Jones:

The 10.5 percent mentioned earlier was startling to me as well. One thing that you did not mention is that a lot of people will plea bargain even though they may not be guilty just because they do not want to look at 20 years in jail. They would rather take a 6-month sentence or probation. I just read an article

about a gentleman who was prosecuted in his twenties and was in prison until he was in his fifties. The district attorney said, "That was in my younger years and I was overzealous, now I regret it and I feel bad." To me that is more criminal than the crimes being committed. I know the police departments have an internal investigation for bad cops; do they have anything like that for prosecutors? Something like an internal investigation unit that looks for these overzealous prosecutors who could just be throwing people in jail because they can and they want to win.

Steve Yeager:

I agree, there are certainly factors in the criminal justice system that could lead someone to believe the plea bargain is in his best interest when he is looking at a lot of charges and he has a family to take care of. I think that does happen. Honestly, I have had clients where I have counselled them not to take the negotiation, but the pressures are so great that they go beyond the advice and take the plea bargain. In response to your question about the district attorney's office, I would defer to John Jones, but I am not aware of any kind of internal mechanism in Las Vegas. I do know that in the district attorney's office in Dallas, Texas, they have created a separate unit and have syphoned off a couple of deputies just to look into cases where they believe there may be wrongful convictions. They have reopened some old cases that have caused people discomfort and taken an active step in doing that. That is through the elected district attorney's office. I would love to see something like that here, but obviously I do not have any say in that.

Assemblyman Elliot T. Anderson:

Mr. Yeager can you talk about the habeas process and where it is inadequate in terms of getting people who are wrongfully convicted out of prison.

Steve Yeager:

I will not go into a seminar on habeas law; it is quite complicated. I can tell you that the Clark County Public Defender's Office does not do any habeas law. That is what happens after the person is convicted: he will either plead guilty or be found guilty at a trial, then there is a series of remedies that he can pursue. He can either say his attorney was inadequate or something was wrong in the process. Typically that work does not happen in our office.

Tonja Brown:

I just want to clarify something I said. I said there was approximately 13,000 inmates in Nevada. Of those, there are 1,300 inmates who have life sentences. Out of that 1,300, about 10 percent are wrongfully convicted.

Chairman Hansen:

Is there anyone who would like to testify in opposition to A.B. 401?

Andres Moses, Staff Attorney, Eighth Judicial District Court:

I am here today in opposition to A.B. 401, specifically to sections 1 through 10. I have had an opportunity to review the amendment and am neutral on it. The crux of this is that the judges feel that this bill would bring an unnecessary new procedure to district courts and probably cause an inefficient use of our judicial resources. There are four specific reasons I want to mention.

One is the fact that the bill goes beyond exoneration and opens up a whole new can of worms of what judges can do and perhaps encroaches into the Executive Branch.

Secondly is that there are already two levels of review in the appellate process: the Nevada Court of Appeals and the Nevada Supreme Court. They will review the entire trial record to see if there are any errors that have been made.

Thirdly, *Nevada Revised Statutes* (NRS) Chapter 34 gives the convicted person the ability to file a petition for writ of habeas corpus, which is where he can make his claim of actual innocence. He can also make claims of ineffective assistance of counsel. Through that process he would have counsel, call witnesses, and have a hearing on those claims. He would also have the opportunity to appeal the decision the district court judge makes through the appeals process.

Lastly, a concern is that this would be an invitation for convicted persons to file petitions that could potentially clog our judicial system. For those reasons we are opposed to this bill. I would like to add that the Second Judicial District has also expressed concerns about this bill and the Nevada District Judges Association is also opposed to this bill.

John T. Jones, Jr., representing the Nevada District Attorneys Association:

We are here in opposition to A.B. 401. I do want to state that we met with Assemblyman Munford yesterday and discussed our opposition to this bill. I think this is an important discussion to have. I want to start off by echoing what Mr. Moses said, there are already processes in place to attack a conviction. The first is a direct appeal where a person will file an appeal to either the intermediate Court of Appeals or directly to the Supreme Court, where he will attack the actual proceedings, the trial, the evidence that was admitted, the decisions made by the judge, and other questions that are relevant to those proceedings. After the direct appeal is exhausted, the defendant has the ability to file a writ of habeas corpus where he can claim some things that

are outside of the trial, including claims of actual innocence. We have processes in place with respect to that currently in statute.

I would also like to reference two other statutes that are in place as well. The first is NRS 172.047 which states, "A district judge may empanel a grand jury to inquire into a specific limited matter among those set forth in NRS 172.175." When you go to NRS 172.175, subsection 2 says, "A grand jury that is not impaneled for another specific limited purpose may inquire into any and all matters affecting the morals, health and general welfare of the inhabitants of the county." So there are already provisions in place where a judge can empanel a limited grand jury for virtually any matter.

I would also like to point out NRS 173.065. This does not necessarily address innocence claims, but it says, "The judge of the court having jurisdiction may in extreme cases, upon affidavit filed with the judge of the commission of a crime, require all available evidence to be delivered to the Attorney General for prosecution, if the district attorney refuses to prosecute any person for a crime." With respect to crimes, if a judge feels the district attorney is not doing his job, he can, in extreme cases refer the matter to the Attorney General. There are provisions in place currently to do exactly what A.B. 401 purports to do. I would like to defer the remainder of the arguments to Ms. Erickson.

Kristin Erickson, representing the Nevada District Attorneys Association:

I would like to address a few technical difficulties with the bill. First, this bill simply does not accomplish the stated goal of allowing the court to inquire into the exoneration of convicted persons. As previously stated, there already exists provisions in law in which to address the innocence and exoneration of convicted persons.

Second, this bill appears to establish an alternative method of establishing probable cause. Establishing probable cause is one of the many duties of a grand jury and justices of the peace.

Third, this makes the district attorney subordinate to the court, which carries its own issues as far as separation of powers goes. The court would allow the judges to direct the district attorneys to do or not do certain things which could put the district attorneys in a conflict of interest position.

Fourth, it requires the district attorneys to examine witnesses without knowing the nature of the offense.

Fifth, prosecutions require support. Support such as investigators to find people, police departments to investigate the crimes, and investigators to serve

subpoenas. That is a function that should be left to the police and not to the judges. This would give the power to the judges to do all of that. Judges should be judges; they should not be police officers. This bill also allows every witness to cross-examine every other witness, which is something unheard of in criminal law.

Sixth, there are no limits on evidence, there are no rules of evidence, and no real protections for the accused. For that matter, there is really no mechanism contained within this bill to identify the accused.

Seventh, it gives the power of immunity to judges, which is often an unwise thing to do. There are different kinds of immunity. Giving immunity can place other prosecutions in jeopardy. It may place a prosecution of the person who is most culpable in jeopardy, or the head of the criminal enterprise in jeopardy if a judge makes that decision without looking at all of the other possibilities.

This bill does not accomplish its stated goal and is not necessary, as we have the grand jury who is ready to investigate improper conduct and exoneration of certain convicted persons.

Assemblyman Jones:

Texas is the state this bill was patterned after. Texas is a pretty conservative state and has the largest number of executions. The law does seem rather odd, yet Texas is using it for a different reason. How does that occur?

John Jones:

I did do some research about Texas when I found out that this bill is based on their laws. When you read this bill, it talks about charging someone with a crime or investigating whether there is probable cause to charge someone with a crime. It seems that, in Texas, that has morphed into these exoneration panels. When I read this, I do not necessarily see any statutory authority for it; I think that is where some of the controversy has arisen in Texas—overusing these courts of inquiry as an exoneration panel.

Assemblywoman Fiore:

Is there evidence that we have innocent people sitting in jail?

John Jones:

In many instances, that is something that keeps prosecutors up at night. No prosecutor wants to put an innocent person in prison. We do the best with the resources and facts that we have in front of us. I do know there have been instances where we have had hearings on writs of habeas corpus that have been filed by the defendants. I cannot think of a case in Clark County where

one has been granted based on actual innocence. I can ask my appellate folks and get those numbers to you.

Assemblywoman Fiore:

How many times do we have someone who claims to be innocent, but did not have the time to go through the process, so they pled it down to get it over and done with. Do we know how often that happens?

John Jones:

I do not see how, as a member of the prosecution team, I would be privy to that information. That sounds like a conversation that would take place between a defense attorney and the defendant.

Assemblyman Ohrenschall:

I wonder if something like this or a commission could have a role in the whole picture. None of us want to see an innocent person serving time in NDOC. Statistically, there must be some. There is the old maxim from William Blackstone, "It is better that ten guilty persons escape than that one innocent suffer." I think all of us believe that. I look at the habeas writs and most of them are limited to one year. I wonder, what if the exculpatory evidence for the witness comes out more than one year later. I wonder if something like the commission or the court of inquiry could have a valid role in that case, where something comes out later that did not come out in trial, did not come out within the statute of limitations.

Kristin Erickson:

That did just occur in Washoe County with the exoneration of Kathy Woods. Unfortunately, she spent 30 years in prison. Despite the fact that the time may have run on certain remedies, she still had a remedy to bring to the court to say, I am innocent. She filed a motion for a new trial, and her defense filed a motion to exonerate her. It was investigated by the District Attorney's Office and the case was dismissed.

Assemblywoman Fiore:

How does Kathy Woods get thirty years back?

Kristin Erickson:

I do not think she can ever get her life back. It is so unfortunate, sad, and disturbing. I do not know what can be done. I imagine a civil suit will be filed and she will receive some monetary relief; but I do not know how a person gets back thirty years.

Chairman Hansen:

That is an interesting case; she was sentenced based on a personal confession. She actually claimed that she did the crime. As we pointed out, prosecutors are human, district attorneys are human, juries are certainly human.

Assemblyman Ohrenschall:

Referring back to Kathy Woods, yes, she did make a confession thirty years ago, from a mental institution in another state.

Chairman Hansen:

I agree, it is an unusual case. If we have 13,000 people in our institutions, over thirty years, that would be approximately 100,000, and this is one case. I have to say that our criminal justice system does an exceptionally good job in convicting the guilty and ensuring that the people who in fact, are not guilty, get a very reasonable opportunity to prove that.

Assemblyman Elliot T. Anderson:

We have a very interesting course on this at Boyd School of Law, it is called Psychology in Lawyering where you get into the issues of why people confess when they are innocent and how juries make decisions. It does come down to people being human, and our minds are incredibly interesting and can lead to a lot of results that we would not normally expect.

Chairman Hansen:

Is there anyone else who would like to testify in opposition? Seeing no one, I will close the hearing on A.B. 401 at this time and open up for public comment.

Tonja Brown, Private Citizen, Carson City, Nevada:

The North Carolina panel has eight members who are empowered to subpoena records and witnesses and consider new evidence not presented in court. If five of the commission members find that a claim of innocence deserves a review, the case will be sent to a panel of three state superior court judges, who will then have to decide unanimously that the inmate was actually innocent and order for the conviction to be overturned.

In the documents that I have provided you, ([Exhibit H](#)) there is a 1988 motion for discovery. Ron Rachow was given an order by Judge Peter Breen telling him to turn over everything. On the motion of discovery, he writes no showing of materiality. It says, any information reflecting upon the creditability of any prosecution witnesses, including but not limited to criminal records, prior inconsistent or contradictory statements (oral or written), and any consideration paid, promised or expected for testimony or information provided. Everything

that was exculpatory evidence, Ron Rachow did not turn over. The exculpatory evidence revealed that there was another suspect, Mr. Zarsky, who I found in 2011 after Mr. Klein died. He was the Sparks Police Department's main suspect.

I presented to the Advisory Commission on the Administration of Justice in June of 2008—in which Mr. Dick Gammick was filling in for one of the commissioners—several cases in which one assistant district attorney, Steven Barker, withheld evidence and was caught. There were other cases, one including DNA that exonerated. You can see those documents. This man had a pattern of withholding evidence in cases. This is an ongoing problem going back many, many years. I submitted an amendment for Senate Bill 57 called the public integrity unit. I think this is what we need to do, to set up a commission, similar to the advisory commission. We have all these people claiming innocence. Now we have DNA evidence.

Consuelo McCuin, Private Citizen, Las Vegas, Nevada:

I am for A.B. 401.

Chairman Hansen:

I will now close public comment. This meeting is adjourned [at 10:13 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 25, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 258	C	Assemblywoman Bustamante Adams	Prepared Testimony
A.B. 258	D	Gil Lopez, Nevada Hispanic Legislative Caucus Extern	Slide Presentation
A.B. 258	E	Assemblywoman Bustamante Adams	Bill Review
A.B. 258	F	Assemblywoman Bustamante Adams	Proposed Amendment
A.B. 401	G	Assemblyman Munford	Proposed Amendment
A.B. 401	H	Tonja Brown, Private Citizen	Prepared Testimony
A.B. 401	I	Michelle Ravell, Private Citizen	Written Testimony
A.B. 401	J	Michelle Ravell	Statistics from the U.S. Department of Justice