MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
April 7, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Tuesday, April 7, 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 P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

Assemblyman James Ohrenschall (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Edgar R. Flores, Assembly District No. 28

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Melissa A. Saragosa, Judge, Las Vegas Justice Court
Malcolm Napier, Police Officer, Northwest Area Command/Patrol, Las Vegas Metropolitan Police Department
Eric Newmark, representing Nevada State Apartment Association
Steve Yeager, representing Clark County Public Defender's Office
Robert S. Uithoven, representing Las Vegas Sands Corporation
Michael Alonso, representing Caesars Entertainment
Josh Griffin, representing MGM Resorts International
Russell Rowe, representing Boyd Gaming Corporation
Benjamin Orzeske, Legislative Counsel, Uniform Law Commission
Dan Sachs, Associate Manager, State and Local Public Policy, Facebook
Joe Dooley, State Policy Manager, Google
Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada
Marla McDade Williams, representing Amazon.com
Christopher J. Lalli, Assistant District Attorney, Office of the District Attorney, Clark County
John T. Jones, Jr., representing Nevada District Attorneys Association

Chairman Hansen:
[The roll was called, and Committee protocol was explained.] We have four bills that we are going to hear and a work session. Assembly Bill 369 has been pulled at the request of the sponsor. For the purpose of amendment, I am also going to pull Assembly Bill 49, Assembly Bill 233, Assembly Bill 240, and Assembly Bill 283.

Assembly Bill 49: Revises provisions governing crimes. (BDR 15-158)

Assembly Bill 233: Revises provisions governing common-interest communities (BDR 10-1025)

Assembly Bill 240: Revises provisions governing liens of a unit-owners' association. (BDR 10-821)

Assembly Bill 283: Revises provisions governing law enforcement powers on certain lands. (BDR 14-397)

We will start our work session first with Assembly Bill 66.

Assembly Bill 66: Revises the qualifications of justices of the peace in certain townships. (BDR 1-492)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 66 was sponsored by the Assembly Committee on Judiciary on behalf of the Nevada Supreme Court. It was heard in Committee on February 9, 2015. This bill requires that all of the justices of the peace in the large urban townships, specifically Las Vegas, North Las Vegas, Henderson, Reno, and Sparks, be licensed attorneys. There is also an amendment proposed by Assemblyman Hansen. The amendment increases the justice court's jurisdictional limits on civil cases and small claims (Exhibit C).

Chairman Hansen:
I will entertain a motion on A.B. 66.

ASSEMBLYMAN GARDNER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 66.

ASSEMBLYMAN O'NEILL SECONDED THE MOTION.

Assemblyman Elliot T. Anderson:
I just wanted to thank you and the judges for working with me and my concerns. I will be supporting A.B. 66.

THE MOTION PASSED. (ASSEMBLYWOMEN FIORE AND SEAMAN VOTED NO. ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

Chairman Hansen:
Assemblyman Jones will handle the floor statement. Next on the agenda is Assembly Bill 98.

Assembly Bill 98: Revises provisions governing child custody, child support and visitation. (BDR 11-49)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 98 is sponsored by Assemblyman Ellison and was heard in Committee on April 1, 2015. This bill clarifies the presumption regarding joint

legal custody and joint physical custody of a minor child. The measure creates a new formula for a court to determine the amount of child support in cases involving joint physical custody, which takes into account the monthly household income of each parent. An amendment was proposed by Assemblyman Ellison and Jessica S. Hanson-Anderson. The amendment includes the clarification of the definitions of joint and physical custody, changes certain calculations for child support, and requires the court to apply certain deviation factors to determine the child support obligation (Exhibit D).

Chairman Hansen:
I will entertain a motion on Assembly Bill 98 as amended.

Assemblyman Thompson:
I wanted to get some clarification on the amendment, specifically section 9, subsection (l), where it talks about the relative income of both parents, including the contributions made to payment of household expenses by an adult cohabitant. I would like clarification about where they were going with that, because I may think of it one way, but someone else may interpret it another way.

Chairman Hansen:
Unfortunately, the bill's sponsor is not here, and we have had this on the agenda for work session for a while. If you would like, because you missed a couple of days, I will hold the bill and give you an opportunity to meet with the bill's sponsor.

Assemblyman Thompson:
We can move forward and get it out of Committee.

Chairman Hansen:
All right, at this point, I will entertain a motion on Assembly Bill 98.

ASSEMBLYMAN ELLIOT T. ANDERSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 98.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

Assemblywoman Fiore:
I am going to vote it out of Committee, but I reserve my right to change my vote on the floor.

Assemblyman Gardner:
I had some concerns with the bill. I will be voting it out of Committee, but I will be reserving my right to change my vote on the floor.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

Chairman Hansen:
Assemblyman O'Neill will handle the floor statement. We will now move on to Assembly Bill 195.

Assembly Bill 195: Revises provisions governing deficiency judgments. (BDR 3-865)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 195 is sponsored by Assemblyman Nelson and was heard in Committee on March 17, 2015. This bill revises provisions governing the amount of a deficiency judgment awarded by a court after the foreclosure of a mortgage or deed of trust. The bill removes provisions that provide that if a person acquires the right to a deficiency judgment from another person, the amount of the judgment cannot be greater than the amount of consideration paid for that right. In addition, the bill removes the provision of law that provides that if a person has acquired the right to enforce an obligation secured by a junior mortgage or lien on real property from another person, the court cannot enter a judgment for more than the amount of the consideration paid for that right.

There is a proposed amendment by Assemblyman Nelson. The intention of the amendment is to preserve existing deficiency judgment protections for residential loans and to remove the protections for commercial loans fully executed after July 1, 2011 (Exhibit E).

Chairman Hansen:
Assemblyman Nelson has worked overtime with both sides trying to reach an arrangement. I believe we have successfully done that. At this time, I will entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS ASSEMBLY BILL 195.

ASSEMBLYMAN NELSON SECONDED THE MOTION.

Assemblyman Elliot T. Anderson:
I wanted to thank all of the parties for getting this to a point where everyone can live with it. I want to clarify something because the work session document did not have the residential amendment within it. I would like to clarify that Assemblyman Nelson's existing amendment that we had during the hearing on residential loans would still be included.

Assemblyman Nelson:
Yes, that is correct. If you look at the proposed amendment, it says, "Any loan that meets the requirements of *Nevada Revised Statutes* (NRS) 40.495(5)(d)." That will provide the protection to those residential loans. I would like to thank all of the stakeholders and Chairman Hansen for facilitating a meeting. Everybody gave a little, and I think we have something everyone can live with.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

Chairman Hansen:
Assemblyman Nelson, I will have you handle the floor statement. We will move on to Assembly Bill 224.

Assembly Bill 224: Revises provisions governing records of criminal history. (BDR 14-977)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 224 was heard in Committee on March 19, 2015, and is sponsored by Assemblyman O'Neill. The bill authorizes the General Services Division of the Department of Public Safety to request of and receive from the Federal Bureau of Investigation the background and personal history of a person by submitting to the Federal Bureau of Investigation one or more fingerprints, or other "biometric identifier."

An amendment was proposed by Julie Butler from the Department of Public Safety. The amendment clarifies that the Central Repository for Nevada Records of Criminal History still needs a complete set of ten fingerprints and adds palm prints as a biometric identifier. The amendment is attached for you to review (Exhibit F).

Chairman Hansen:
I will entertain a motion on Assembly Bill 224.

> ASSEMBLYMAN GARDNER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 224.
>
> ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

Assemblyman O'Neill, would you please handle the floor statement. Next, we will go to Assembly Bill 267.

Assembly Bill 267: Revises provisions concerning the sentencing and parole of persons convicted as an adult for a crime committed when the person was less than 18 years of age. (BDR 14-641)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 267 is sponsored by Assemblymen Hambrick, Hickey, Anderson, et al, and Senators Hammond, Parks, Ford, et al, and was heard in Committee on March 27, 2015. The bill eliminates the imposition of a sentence of life without the possibility of parole upon a person convicted of certain crimes who was less than 18 years of age at the time the crime was committed, thereby making life imprisonment with the possibility of parole the maximum punishment.

A court must consider certain mitigating factors in determining an appropriate sentence to be imposed upon a person who is convicted as an adult for an offense that was committed when he or she was less than 18 years of age. The bill provides that a prisoner who was sentenced as an adult for an offense that was committed when he or she was less than 18 years of age is eligible for parole after the prisoner has served 15 years of his or her sentence. The State Board of Parole Commissioners must consider certain mitigating factors when determining whether to grant parole to such a prisoner. There is an amendment included in the work session document (Exhibit G).

Chairman Hansen:
I will entertain a motion.

> ASSEMBLYMAN THOMPSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 267.
>
> ASSEMBLYMAN ARAUJO SECONDED THE MOTION.

Assemblyman Thompson:
I believe I am speaking for some of my colleagues when I make the request that Assemblymen Elliot T. Anderson, Diaz, Araujo, and myself be added as cosponsors for the bill.

> THE MOTIONED PASSED. (ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

Chairman Hansen:
Assemblyman Anderson, please handle the floor statement. Next, we will go to Assembly Bill 297.

Assembly Bill 297: Revises provisions governing trafficking in controlled substances. (BDR 40-586)

Diane Thornton, Committee Policy Analyst:
Assembly Bill 297 is sponsored by the Assembly Committee on Judiciary, and was heard in Committee on March 31, 2015. The bill adds certain schedule III controlled substances to the crime of trafficking in controlled substances. This bill also lowers the threshold aggregate amounts that a person may be found guilty of trafficking in controlled substances. There are no proposed amendments for this measure (Exhibit H).

Chairman Hansen:
I will entertain a motion.

> ASSEMBLYMAN O'NEILL MOVED TO DO PASS ASSEMBLY BILL 297.
>
> ASSEMBLYMAN GARDNER SECONDED THE MOTION.

Assemblywoman Diaz:
I am going back and forth with this bill. I am going to vote it out of Committee but reserve my right to change my vote on the floor.

Assemblyman Thompson:
I am on the fence as well, but I will vote it out of Committee and reserve my right to change my vote on the floor.

Assemblyman Araujo:
Ditto.

Assemblyman Elliot T. Anderson:
Ditto.

Assemblywoman Fiore:
Ditto.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

Chairman Hansen:
I will give the floor statement to Assemblyman Trowbridge. We will now close the work session.

We have four bills on the agenda to hear today. Some of these bills are highly controversial, and we are not going to spend a great deal of time on them. For example, on Assembly Bill 386, we will have a hearing with about 15 to 20 minutes allotted for each side. Then I will send both sides into my office to work out the amendments. If you cannot work it out, the bill will die. We have until Friday, and that is it. The same rules apply for Assembly Bill 414 and Assembly Bill 433. We will start with Assembly Bill 386.

Assembly Bill 386: Revises provisions relating to real property (BDR 3-921)

Assemblyman Edgar R. Flores, Assembly District No. 28:
I am here to present Assembly Bill 386, which deals primarily with squatters. In addressing the issue, we had to include a lot of clean-up language in *Nevada Revised Statutes* (NRS) Chapter 40 in order to ensure that we do not have conflicting terminology and law. By the way, we are going to be working off of an amendment mock-up (Exhibit I). What you have on the Nevada Electronic Legislative Information System (NELIS) is not correct. We are printing the mock-ups now and will provide you all with a copy. It is very similar to the bill in intent, but there is some necessary clean-up language which was provided by the Legislative Counsel Bureau (LCB) and some of the stakeholders.

Starting back in November, I heard continuously from constituents about the issue of squatters. I heard stories about individuals living next to my constituents who did not appear to be legitimate. My constituents would say, "This individual is living next to me. I do not know who he is. They just moved in. I know the actual owner of this property. I do not know what they are doing there." I spoke with realtors who said they were losing money because these properties were being vandalized and not being taken care of. These people were moving in, changing locks, and playing games.

After listening to these conversations, the first thing I did was go to Legal Aid Center of Southern Nevada in order to learn more about this issue and why we could not do anything about it. They directed me to the self-help center at the Regional Justice Center who then directed me to Judge Melissa Saragosa, who will be providing a breakdown of the bill. Judge Saragosa also pointed me in the direction of law enforcement. Officer Napier is here and will be testifying on behalf of law enforcement. He will explain what they see every single day and why their hands are tied because of how the law is currently written.

As early as December, Judge Saragosa started reaching out to others for feedback. Consistently throughout the past four or five months, there have been various amendments from stakeholders coming to the table. We have been trying to work with everybody. We are going to address this issue through three different branches: (1) criminal, (2) where criminal and civil interact, and (3) through the civil world, which is why we need law enforcement and Judge Saragosa to be present.

It is important to explain that 9 out of the approximately 30 sections we are looking at deal directly with squatter issues and language, and 15 of those sections deal with clean-up language. There was cross-referencing to ensure there is consistency within the terminology allowing us to explain where it is necessary to keep certain things in or out.

I will start out by explaining why this is an issue in the criminal world. A squatter is not necessarily guilty of burglary. Also, he or she is not necessarily guilty of other crimes already identified in the criminal world. That is one of the reasons that law enforcement has such a hard time penalizing them or pursuing a conviction. There is no real definition for a squatter in the criminal world and the way that we penalize it. For that reason, we have created three definitions that will help us and also help law enforcement to do their job.

In the civil world, there are approximately 25,000 eviction cases that are heard at the Las Vegas Justice Court alone. Is that correct, Judge Saragosa?

Melissa Saragosa, Judge, Las Vegas Justice Court:
Yes, the Las Vegas Justice Court hears about 25,000 eviction cases per year.

Assemblyman Flores:
Nevada Revised Statutes Chapter 40 talks about eviction law with language that uses the word "tenant." A squatter is not a tenant. For that reason, it was necessary to also clean up the civil side because, in that world, we do not have a definition for a squatter either.

There is nothing in statute to address the issue. I just wanted to lay out that foundation as we move forward. Now, Officer Malcolm Napier has a presentation for you. Afterward, Judge Saragosa will break down the bill.

Malcolm Napier, Police Officer, Northwest Area Command/Patrol, Las Vegas Metropolitan Police Department:
Basically, I am here to try to get your help for a complex issue. We are talking about an issue of one person moving into a complete stranger's home without ever seeking permission or forming a landlord-tenant relationship. What we are seeing over and over again is the people involved in this conduct have lengthy criminal records. They create a fictitious lease with the owner of the property to show to police and realtors in an attempt to make us go away. Because of this, the Las Vegas Metropolitan Police Department (LVMPD) has always treated it as a civil issue. A property owner will call us to say there is a complete stranger inside his or her home. We go to the home to make contact with them, but we essentially walk away because it is treated as a civil issue. What that has done is to allow the problem to manifest and the numbers to grow.

[Officer Napier began a PowerPoint presentation (Exhibit J).] This first slide shows a 2013 case that occurred in an area that I work. It was a foreclosure house. Over a six-month period in 2013, there were 15 calls for service referencing criminal conduct. Four of the calls were from neighbors reporting squatters. Once again, the officers made contact but it was treated as a civil issue. One of the people inside that home was the gentleman whose picture is shown. He was using the squatter house as a base of criminal operations. He is alleged to have committed a burglary at a complete stranger's house nearby, and he pistol-whipped and shot a 75-year-old woman who lived half a mile from there. His face is the last thing that woman saw.

We all know that the criminal conduct involving squatters depreciates the property value. You can have one house in a nice neighborhood that affects everyone else in the community. It is not just a Las Vegas issue. There have been issues in Sparks involving a 73-year-old homeowner who was put in a situation where he ended up shooting and killing a squatter and injuring

another person who was inside his property. Prior to that shooting taking place, one of the squatters was admittedly there smoking methamphetamine.

The bottom line with squatters is that the only person who wins when a squatter enters a property is the squatter. With a squatter, the property owner, Realtors, the city, law enforcement, and neighbors are the losers. It seems to be an issue which is spreading from California. Many of the squatters we come into contact with appear to be transient from there. The northern part of the state has proximity to Interstate 80, which means this problem could spread to this area.

The two pictures on page 4 of the presentation represent a fairly typical squatter house. This is a house for sale by a Realtor. How would this Realtor sell this property with all of this stuff inside, none of which belongs to the owner or the Realtor? It is all squatter material. In this particular house, we found 11 convicted felons, a parole violator, and a Taser that had been stolen from a police officer during a burglary at the police officer's home.

As far as our caseload goes, I have a video that covers the problem fairly well. [Officer Napier begins to load the video.] While the video is loading, I will say that talking about what we see routinely at these houses, the word is out there and squatters know that if they just present a fake lease, we will go away. We have developed a process to somewhat respond to the problem. I will give you an example of what we see. The last squatter house I had taken enforcement on was about a week and a half ago. Before we had a chance to go inside, the squatters came outside, leaving inside a three-year-old child who was completely naked, with 14 grams of crack cocaine in the same bedroom within arm's reach of the child. In the case before that, we have discovered a forgery lab with well over a thousand stolen checks and fictitious identities. The one before that had quite a few gang members inside who had hidden stolen firearms inside the range.

A homeowner calls us to say there is a squatter in the home. We know the history from previous events. It is very frustrating for us to have to tell the homeowner the law is not clear. To tell them that we cannot do anything about it and we are going to walk away leaves homeowners extremely frustrated. They go to the media and their council members. The media and elected officials are extremely supportive of our efforts of trying to clarify this and deal with it. There has not been anyone pushing back as far as our trying to resolve this. We see situations where homeowners are actually going inside and confronting these repeat criminals, thereby putting themselves in danger. When we enter one of these houses, we know what to expect. It is something we

could potentially use a special weapons and tactics (SWAT) team for, but we are putting an innocent homeowner in there to deal with it.

As far as our numbers, I work in one area of command. For the last year, I have had about 196 squatter house files on my desk. The vast majority of those are traditional houses, and three of them are standard apartments.

The video does not appear to be working, but this one case is within the homeowner's property. There is no dispute about that whatsoever. The homeowner arrives at his home, finds a strange couple inside, and they show him a fake lease. The lease is with someone other than himself, a completely random third person. We respond to it, gather statements, and do a full investigation to make sure we are acting on behalf of the owner. We used existing trespass laws to charge the squatters inside with trespassing. The squatters went to the courts and filed a wrongful eviction suit against the homeowner and us. The judiciary have their hands tied by existing law and have actually allowed the squatters back in the house. That was a case where the homeowner stated he did not know the people.

Chairman Hansen:
Let me interrupt. Did you just say that after you evicted them, you had to allow them to go back in the house?

Malcolm Napier:
Yes, sir.

Chairman Hansen:
I want to hear all of the testimony, but the bottom line is we have four days, including today. I am 100 percent supportive of what you are trying to do. This is crazy. I am amazed that with ordinary trespass laws, you are not able to do something about this currently. My problem is that it is a very detailed bill, and there is some opposition to it. I do not think you have to show us a whole lot more because I do not think there is anyone on this Committee who does not totally agree that there is a major problem. It just amazes me that it gets so convoluted under current law. Somebody does this, you take them to court, it is obviously a fraudulent document, but until you can prove it is a fraudulent document, they are able to go back and occupy the home. It is just bizarre. Please continue. I would like to go through the bill fairly quickly, and then hear from the opposition. Afterwards, you can meet in my office to get the bill worked out. Just so that everyone knows, the Las Vegas Metropolitan Police Department is going to be the driving force as to what is in the bill. The issue is how do we deal with the squatters? If there are any extraneous issues, we will probably not get into it here in the interest of time.

Malcolm Napier:
Just to show the ongoing problem, this is the northwest area of command, where I work. [Continued with PowerPoint presentation (Exhibit J), pages 6-9.] In 2012, we had 285 calls relating to squatters. In 2013, we had 460 calls, and in 2014 we had 706 calls. You can see from the map how it is spreading. The bottom portion of page 10 shows the actual percentage increases. All area of commands have been going up. There is one area of command where it went down, but that was due to a change in how the area of command was mapped out. We are on track with a 40 percent increase to date, if it continues at the same rate based on last year's numbers.

We have already talked about how brazen the squatters are. In the particular case where they made up their own lease and went to court, they actually asked the homeowner for compensation for food, hotel, transportation, and clothing as a result of being kicked out of the house. There is one case that we have somewhat resolved using existing law. It was almost a $1 million property with a value of $950,000 [(Exhibit J), page 17]. If you look at it now, on page 18, all of the back doors and windows had the locks changed after it was broken into. Page 19 shows an example of the fake lease that we get. It is a fake lease showing that they have paid in the area of $120,000 in cash for a two-year lease on the property. The lease is with someone who has nothing to do with the property whatsoever. We see this day in and day out. We confiscated that lease as evidence.

We responded to a different complaint and saw a completely different lease showing an address that does not exist, and a landlord that does not exist. This time, the gentleman supposedly paid $45,000 for a three-week use of the house, as shown on page 20.

We did an analysis of the criminal history of the people involved in this activity. These are not innocent victims that are doing this. Most have criminal records. There is one gentleman on the list who is 37 years old and has been arrested 72 times. The same goes for females. We respond to these houses after a very complex investigation. It is basically at the detective level. We gather documents and statements. We research deeds and use title companies, and correspond them with the owner. We are not just improvising. It is a very complex thing. We want to be sure that we are actually arresting criminals who have gone into this with intent, and that we are acting on behalf of the lawful property owner.

Using an overlap of known squatter houses over a one-week period, there is a direct correlation of increased robberies, burglaries, and stolen vehicles in the area of squatters. On pages 26 through 32, the pushpins represent the squatter

houses, and the red dots show where our hot spots for crime are. The trends match across the Las Vegas Valley.

What we are seeking with Assembly Bill 386 is to create three new crimes. It makes it clear that if you break into a house with the intent to take over occupancy, the crime would be considered housebreaking. It is clear, and it is common sense. It also creates a separate crime for the people who are inside the house and have knowledge that they have no right to be there. We are not trying to arrest people who are innocent victims of the scam. Although we are not generally seeing that, it is definitely the exception. The statute says that we are there to make arrests for people who are there with intent and who know what they are doing is wrong. It is a dual-faceted criminal and civil response, which means that it clarifies if it is a criminal or civil matter. It is both because an arrest is not the same as eviction. Even if we arrest a person for a crime, there is still property left inside. This bill sets the procedure for the resolution of that.

The main thing that I take from this bill is that it spreads the message that this conduct is not acceptable, which is the exact opposite of the message that is out there right now. I seek your support because if this was your house and someone with a criminal history who may be a heroin addict is in your house and you do not know him, what would you want done?

Chairman Hansen:
The gentleman who shot the squatter in Sparks is up on murder charges. After seeing this, I can understand why people are reaching the high level of frustration, especially with repeats of this sort of activity.

Assemblyman Araujo:
I appreciate this concern being brought forward, and I understand the issue. For the most part, many of these folks deserve to be arrested for the act. However, I am thinking of the homeless youths who are looking for a place to stay other than being under some type of tunnel or highway overpass, or a homeless elder who is looking for someplace to stay. What are we doing to ensure that we are not just arresting these folks, prosecuting them, and then sending them back out to the street? Is there an intervention in place, and are we thinking practically here? Are we looking to help these folks if there is a problem they need to have resolved?

Assemblyman Flores:
Thank you for that question. When we were discussing how we would approach the new law we are creating, the first thing I said was that we need to be sure we are not going after a person who is trying to take shelter in the

rain or the cold. *Nevada Revised Statutes* 207.030 makes it a misdemeanor for someone to break into a location to sleep. I am not using the technical terminology but, in essence, that is the scenario you are describing. In the statutes we are working with now and the new definitions we have created, there must be an intent to take up residence. It is not enough for people to say that they went into the home to sleep. It is their bringing in their personal items and being there every day. They will connect the utilities. There are many different factors on how we would identify that intent. Somebody breaking into a home to sleep would be a carve-out to this bill.

Assemblyman Elliot T. Anderson:
I just wanted to commend you for taking this on. It is a real issue and it is happening in my complex. I have had constituents come to me exasperated. I really worry about this bringing down property values after all of the foreclosures that we have just gone through. I cannot speak to all of the technical concerns, but I really do commend you. We need to give law enforcement more tools to deal with this.

Chairman Hansen:
I will give you another ten minutes and then we will open it up to the opposition. Then, I will have everyone go to my office. In my office there is a sign that says treat others how you like to be treated. I want everyone to work this out fast because, frankly, you only have until Friday. If you would like to have Judge Saragosa run through the bill now, that would be fine.

Judge Saragosa:
The Las Vegas Justice Court handles many of these cases. In fact, we have about 25,000 eviction cases filed every year, and we have for the last ten years. I will give you an idea of what the court sees, which is a little bit different from what Officer Napier sees on the street. We see a variety. We see homeowners who are frustrated because they are attempting to use the laws that we have in place in a summary eviction fashion. These are specified in statute for landlord and tenants. The squatters are not tenants, so they do not technically qualify. The only statutes we currently have in place are a definition of a forcible entry or a forcible detainer. Those definitions are kind of antiquated. In fact, one even says it has to happen at night. These are older statutes that just need to be updated.

Sections 11 and 12 of the bill redefine forcible entry and forcible detainer. It makes it a more current and modern version of the definition to encompass what we are actually seeing every day by the squatters. Many times there is damage to the homes. Other times, there is no damage except for a change of the locks. Our old statutes that require there to be damage to the home were

a little bit difficult to work with. We worked in manipulation or changing of the locks as part of the definition to encompass what we are seeing.

Section 46 is the housebreaking criminal statute that Officer Napier referred to in his testimony. Section 47 is the unlawful occupancy criminal statute that Officer Napier also referred to.

There is one other criminal statute in section 48. If you come to the court, you have been ordered out or have been locked out by a homeowner because you have been arrested for one of these crimes. It is another criminal act to come in and violate that court order. Those are the criminal portions of the bill that Officer Napier has put into place from a criminal standpoint. There is a bit of an overlap there.

One photograph that Officer Napier showed was of a home filled with items that all belonged to the squatter. When Officer Napier makes an arrest for one of these enumerated offenses and that individual gets arrested, the homeowner is left with a home. The homeowners need to be able to secure the residence, and protect their own structure, fixtures, and appliances. However, they have all of the squatters' personal belongings in the home. We certainly do not want someone who is arrested to come back to the residence to get his or her belongings. We do not want to encourage more volatile, dangerous situations for the safety of the public. The idea behind the crossover of criminal and civil law is to give the homeowners some remedy. What do they do now that there has been a criminal arrest? Section 2 of the bill will cover this overlap area. It outlines a process that gives an owner the absolute right to come in, recover, and change the locks to the property if there has been a criminal arrest.

There is also a remedy in the bill that gives the squatter access to the court by applying to the court if they feel they were wrongfully locked out. The remedy can be found in section 4. All of the personal property that belongs to the squatter can be retrieved through court procedure within a limited period of time. Otherwise, the owner is free to get rid of it as abandoned or discarded. At least there is some process through the court. The idea is to discourage a dangerous safety problem where a person who was arrested comes back to the property to get his or her personal belongings. We do not want to encourage that. The crossover is giving that owner those rights.

We have also seen many situations that do not necessarily fall under the criminal side. Officer Napier described some instances where there are people who are victims of scams. We see those frequently in the court. What happens is you have a person who believes he is a tenant for all intents and purposes. He has looked on <www.craigslist.com>, researched a home for

rent, finds a single-family home, and makes contact with an individual who represents himself to be the owner or an authorized agent of the owner. This person takes a first month's rent, a security deposit, and provides a lease. The person believes that he is a tenant and turns over $3,000 to this person who portrays himself as the owner. There are those situations and victims of this type of criminal activity. Although they may not be criminals, they still cannot stay because they are not authorized to stay by the owner.

In order to give the owner a civil remedy, section 3 was created. It provides a similar procedure to a summary eviction case with a landlord and tenant scenario. It creates a four-day notice where an owner would give an eviction notice to someone who, under those circumstances, may not be arrested for a crime. There is an opportunity for that person to present an affidavit to the court saying why he or she should not have to leave. The court would take appropriate action after reviewing the affidavits. If there is sufficient information, the court would have the discretion to act in chambers. If it is necessary to have a hearing, the court can have a hearing and then rule on the issue.

The other part is, as Officer Napier has said, sometimes these criminal actions and investigations take time. They are performed on the detective level, and LVMPD is doing a great job investigating those. Sometimes the investigation takes longer than four days. At the same time that LVMPD is doing the investigation on criminal activity, the homeowner can come to the court and file the notice against the person occupying the home and receive an order for removal, within four days in some cases. That may be faster than LVMPD can make an arrest and finish the investigation. It gives the owner two options and a dual-pronged approach to dealing with the squatter situation.

Some other sections that I would like to point out are a result of what is happening in the courts today. Our law does not authorize a summary procedure. Instead, we have forcible entry and forcible detainers which would require a homeowner to file a formal civil complaint, follow the procedure of a longer and more formalized process, and set a case for a trial, perhaps for a temporary writ of restitution. That process alone takes 45 to 60 days, at the least. That is why this summary procedure is a quicker, easier, and faster method. However, what is happening currently is each day in the courts, owners are frustrated and are trying to find a way to fit a square peg, as with the squatter situation, into the round hole of a landlord-tenant situation. Currently, we have a number of statutes that all begin with "A tenant is guilty of an unlawful detainer when...." These are not tenants and should not necessarily be treated as tenants. They need a process, but not the landlord-tenant process.

In evaluating the landlord-tenant process, there are some key areas that I found problems with, and not just reviewing the squatter problems. In the eight years that I have been on the bench, I have handled civil matters for three and a half years alone. Of those 25,000 eviction cases a year, I handled half of them for three and a half years. I have seen a lot of evictions come through. Here are some of the key areas that I think are necessary for change. They may not be squatter-related, but they were highlighted in a squatter scenario. Owners will try to use the term "nuisance" by saying, "The squatter is really a nuisance under landlord-tenant law. Let us use the summary eviction process for that." This is the summary process currently in place for a landlord to evict someone.

In section 20, subsection 1, it refers to NRS 40.254. Currently, what happens is the notices are served, the tenant has the opportunity to respond, and the hearing can be held. This particular statute is used every day by landlords to evict tenants for a nuisance, unauthorized subletting, illegal business on the property, violations of the Uniformed Controlled Substances Act, and holdover tenants. There are all kinds of basis for an eviction. Guess what? Our statute does not authorize that. In plain language of the statute, it only authorizes the summary process if the basis of eviction falls under NRS 40.251, which is no-cause evictions, tenants at will, mobile home park cases, and RV lot cases. There is a gaping hole in our current landlord-tenant law that is ignored.

I am not one of those judges who thinks that because I wear a black robe, I can make up the law as I go along. I am very cognizant of the legislative intent behind these laws. Every day in our courts they are ignored because it seems like the legislative intent behind it was to authorize landlords to evict for all of those things. That is not what the law says. Those are the things that have been added to section 20 of this bill in order to fix the problem. It will authorize landlords who have a nuisance or controlled substance problem to evict those tenants. They are using that process today, and it is overlooked. The laws need to be changed to reflect what is happening and what the Legislature intended years ago. Part of the problem was amendments were made to add statutes, and they did not cross-reference this one.

Chairman Hansen:
At this point, we will conclude the proponents' testimony. I am going to go to opposition with an understanding that opposition will be about ten minutes. We do not have the time to thoroughly vet this bill as it needs to be. This is an extremely important issue. Therefore, what I want to do is have all of the involved parties meet in my office and work this out, and getting it back in Committee by Friday at the latest. Assemblyman Flores, is there anything to add?

Assemblyman Flores:
I would like to seek your indulgence to ask everyone in Las Vegas who is in support of the bill to please rise. All of them are direct victims of squatters and/or are in the business of selling homes and have lost money as a consequence of squatters. Every single individual there has taken time out of his or her busy work schedule to be here. Southern Nevada Evictions Services is also present. I just wanted to make sure that we acknowledge them all.

Chairman Hansen:
I want to thank all of you there in Las Vegas. Normally, I would have all of you testify, but we really are up against a very short time limit. I assume what you really want is to have a good piece of legislation in order to have these issues addressed. That is what we are working on here. We will move forward with that at this time. I thank all three of you in Carson City for your testimonies. I am going to move to the opposition. Then we will get this bill worked out.

Eric Newmark, representing Nevada State Apartment Association:
Thank you for allowing us to offer some opposition. For the record, the Association is 100 percent in support of law enforcement and the efforts that are being undertaken here to handle the squatter issue. Our Association members work day in and day out with LVMPD, who is handling all of the Las Vegas evictions currently. It is a relationship that we want to maintain. We are also 100 percent supportive of most of these squatter provisions. There have been references to sections 2 through 4, which are the new laws for the handling of squatters and providing some civil avenues to proceed with the handling of these issues. With the exception of a few minor issues, the Association is in 100 percent support.

There are also two sections dealing with forcible entry and forcible detainer revisions that go along with sections 2 through 4 of the bill. The Association is in favor of that part because it does clarify the law. As Judge Saragosa pointed out, there is a loophole there. There is a definition of what things are, but no follow-through. The Association is also in favor of the criminal sections being added because it will give LVMPD the ability to do what they need to do.

The only opposition the Association has would be in reference to some additional components of the bill. The bill is 96 pages long, and it has been a fluid bill, moving over time. It has been hard to grasp everything that is going on in the bill. There have been some specific issues that the members of the Association have brought to my attention. I will provide you with a brief synopsis of some of these issues. It is in no way, shape, or form a cumulative undertaking because we do not know some of the impacts that may occur.

Section 14, subsection 2, paragraph (a) is the section that details the 30-day no-cause notice. If the term is up on a lease agreement and you want to regain possession of your property, you can give a 30-day notice to move forward and regain possession. The existing law already allows tenants to ask a landlord for additional time. Most landlords will give the extra time. Most actually require 60-day notice in the lease agreement. This provision says if the landlords will not give them the extra time, they will have to specify the basis for denying it.

The Association's understanding was if there is a 30-day no-cause notice, why would we have to give a reason? The major concern is fair housing. If we have to give a reason why we are not going to renew someone's tenancy or give them additional time, it brings us into the fair-housing realm and possible litigation for discrimination. Existing law already provides for a tenant to ask for more time. The Association members feel that is working. They do grant more time when asked. The revisions to this bill will put in place the possibility of a back-and-forth situation between the tenant and landlord regarding timelines and things of that nature.

Section 7 involves the tenancy-at-will section. It is a new law being added. The Association members brought to my attention that subsection 3 of NRS 40.251 already handles tenancy-at-will issues and provides a five-day notice. We are not really sure why this is coming in.

Section 16, subsection 1, paragraph (d) is part of the nuisance provisions which were referenced earlier. The concern from the Association is that the definition of where a nuisance can occur has been changed from on the premises of the property to on or about the leased premises. There is a concern that sometimes nuisances occur in the common areas of the property, especially in a multifamily apartment complex. If it is the pool area or the leasing office, is on or about the leased premises going to work? I do not know. There are some clarification issues that the membership has raised.

Section 19, subsection 4, involves the nonpayment of rent and summary eviction procedures. There were some concerns by the membership that in subsequent revisions of amendments of this bill, definitions of what rent actually is and what you can collect have gone back and forth. We were hoping to see some more clarification in this section so that landlords will know exactly what they can or cannot be charging with a five-day notice. It looks like it was removed in the last revision. I am not really sure where that stands. Currently, under the law, they can only request rent, which is all periodic payments and reasonable late fees. Some clarification is needed there, but we are not quite sure what is going on with the amendments.

In sections 19 and 20, there are requirements that before a landlord can file eviction actions in justice court, he should reasonably determine that the tenants have vacated. Obviously, the concern there is the tenants should not have an eviction record if they have actually vacated the property and have complied with the notice to vacate. The Association membership has expressed some concerns that they are not sure what "reasonably determines" means. They would like some additional criteria because it is slightly confusing. Does reasonably determine that they have vacated mean they have turned in keys? What if they have skipped and there are no utilities on? There is some gray area there, and we have seen it firsthand with some eviction actions where they really were not sure what they were supposed to be doing. The tenants thought they were doing the right thing but, unfortunately, they were not.

The Association's recommendation was 100 percent in support of the squatter issues. Regarding anything else in NRS Chapter 40, all respective parties have come together during the interim and tried to put together a fairly effective rewrite to take care of all of the other issues we are having.

Assemblyman Thompson:
I have a question about the Apartment Association. How much of a priority is security? Many times squatter issues are about opportunity. What is your Association doing to ensure that people are not squatting? With regard to the second question, previously I have worked with the homeless population. There are so many outreach services that would be willing to work hand-in-hand with you on those issues.

Eric Newmark:
From a multifamily standpoint, they are actually doing checks of the units fairly frequently. The Association has to have a running total of what is available or not available for occupancy. We keep a very good eye on what is going on within the properties. Sometimes the squatters do go into the multifamily units, but our membership is also composed of single-family owners. The Association constantly keeps an eye on what is going on. When it becomes an issue, they contact law enforcement to take care of it. That is why we are in support of having law enforcement have the tools to do what they need to. If law enforcement is unable to handle it and it is a civil matter, we proceed through court action.

In my experience, I have not seen too many issues with the homeless coming into multifamily complexes. That has been more of a single-family home issue. It will then depend on the individual owner or the property management company that is taking care of the home. Sometimes we have absentee owners

who use a local property management company. From a multifamily standpoint, we are on the property doing everything.

Assemblyman Elliot T. Anderson:
I am a little confused by your last statement. I actually live in a multifamily community with some condominiums used as rentals. My complex has had those issues. Do you have an estimate of how many times your association has seen squatting incidents?

Eric Newmark:
I do not have the exact figures as to how many times our membership has dealt with squatter issues. As a prosecuting attorney, I can say that it does come up fairly often. We are mainly focused on a larger complex with 200 or more units, where there are more eyes to see things, report things, and take action. For a small condominium complex with only a few units and no on-site leasing office, it can be an issue.

Chairman Hansen:
Is there anyone else who would like to testify in opposition or in the neutral position? Mr. Newmark, I would like to ask you to go over to my office when this hearing is done to meet with the proponents. We are up against a time limit and this is an extremely important issue which must be addressed.

Steve Yeager, representing Clark County Public Defender's Office:
I am neutral on this bill. I wanted to let the Committee know that, initially, I was opposed to the criminal sections, which are in sections 45 to 49. I want to thank Assemblyman Flores and LVMPD for working with our concerns to be sure we are not capturing any innocent conduct with the amendments that have been agreed upon. We are now officially neutral.

Chairman Hansen:
I have a question for you. Let us say that I am trying to rent an apartment or house. I see and respond to an ad. I pay a retainer of $1,000 and live in it for a couple of months. The owner then shows up, and it turns out that the lease I signed was not with the actual owner. How often do you see that happen? Obviously, we have a problem here. We have legitimate squatters that you obviously want to get rid of. However, there are innocent people that are being taken advantage of. In your experience at the Public Defender's Office, how often does it come up, and how do you handle it?

Steve Yeager:
I have not seen a prosecution based on that scenario where essentially someone is being prosecuted for taking advantage of another person in the form of

a lease. I cannot speak to how often it happens. I think it does happen, but I have not been aware of such a case. Perhaps it is because of a breakdown in the ability to prosecute those types of cases. However, I believe the new housebreaking section being added in section 46 will give LVMPD the ability to prosecute those individuals who are taking advantage of innocent people.

Chairman Hansen:
I am closing the hearing on Assembly Bill 386 at this time. I would like to ask everyone who has an interest in this bill to meet in my office to work it out.

[Also submitted but not discussed was a summary of Assembly Bill 386 from Assemblyman Flores (Exhibit K), a Nevada and residential trespassing fact sheet (Exhibit L), Jim Hastings highlights in support of Assembly Bill 386 (Exhibit M), and a letter of support for Assembly Bill 386 from Don Nassif (Exhibit N).]

We are now going to open the hearing on Assembly Bill 414.

Assembly Bill 414: Revises provisions governing agreements with certain governments for purposes of interactive gaming. (BDR 41-1072)

Robert S. Uithoven, representing Las Vegas Sands Corporation:
Thanks to our customers, our shareholders, and most importantly, our valued employees, Las Vegas Sands Corporation remains the largest gaming company in the world by market cap. Despite the tremendous success and growth of Las Vegas Sands, we are proud to call Nevada home. We are proud that Nevada strives to continue serving as the gold standard of the gaming industry.

We support this legislation, Assembly Bill 414, which seeks to clarify the intent of Assembly Bill No. 114 of the 77th Session. As some of you will recall, A.B. No. 114 of the 77th Session was rushed through as an emergency measure last session in a race to see which state could be first to legalize online poker so that we could enter into compacts with other states.

In the four or five hours that this bill faced scrutiny before it was signed into law, it was sold as an Internet poker bill. Numerous references through testimony, press articles, gaming publications, and other materials spoke to the emphasis of A.B. No. 114 of the 77th Session in providing poker only. I would be happy to provide the Committee with a collection of these materials if you would like to review them.

While Las Vegas Sands opposed Internet gaming—in all forms, then, as it does now—we stood down last session as we could see the writing on the wall from

the Governor and the legislative leaders that this legislation was going to go forward with or without our support.

Since that February day in 2013, when all of this was done in a matter of hours, we have and will continue to raise questions. We have met with some of you on this Committee, with the Governor, and with our bipartisan congressional delegation to express our concerns. What happened to the promised jobs that were guaranteed in A.B. No. 114 of the 77th Session? What happened with the revenue projections? Was it really a poker-only bill?

Mr. Chairman, we are not here to Monday-morning quarterback, but rather to discuss what has occurred. The jobs and revenue barely exist. Why? As one of our fellow nonrestricted licensees has publicly stated, online poker alone is not sustainable. Unfortunately, another one of our major licensees in Nevada found out the hard way and ended up shutting their online poker operation down.

Many others in our industry believed that the future of Nevada's gaming industry was to put casino games on our phones, computers, and iPads. Where are they today? The truth is the only major push for legalized online gaming in this country is being financed by PokerStars and Caesars Entertainment, one the indicted, the other the bankrupt. [Continued reading from prepared statement (Exhibit O).]

Chairman Hansen:
Basically what you are saying is the intent of the bill is simply to confirm what A.B. No. 114 of the 77th Session was intended to do, which is to limit Internet gaming to strictly poker.

Robert Uithoven:
That is correct. The intent of A.B. 414 does not change Nevada's gaming law. It does not change the original law that set forth Internet gaming. All it does is to clarify what was passed, unanimously, as an emergency measure and signed by the Governor last session. That bill and law is for Internet poker only when it comes to interstate compacts.

Assemblyman Elliot T. Anderson:
I agree with you that we need to keep Nevada as the gold standard. When I think back to last session, I think how we were trying to have the best law to ensure that we could be at the forefront of new technology. I understand that it may not have been the intent to have interactive gaming, but what is the harm of leaving it how it is currently? We are not in session a whole lot. We are here only 120 days every two years. I would think the Nevada Gaming

Commission and the State Gaming Control Board are not going to leap into anything harmful. Therefore, what is the harm in just leaving it open so that if the technology develops, we are not restricting our gaming industry from taking advantage of new opportunities?

Robert Uithoven:
I would say that it is important to clarify that it was for poker only. I think it is important for this body to assert itself in ensuring the policy is correct. We disagree with U.S. Attorney General Eric Holder's decision to throw out and essentially rewrite the Federal Wire Act, without congressional input or oversight. We believe that Internet gaming is bad for the billions of dollars of infrastructure and jobs in Nevada. I think some clarity from this body to our gaming regulators is needed.

Assemblyman Jones:
You referenced what happened. Can you provide a brief explanation? Also, I wonder if this area has not been developed yet, what is the harm in seeing if it can be developed? If it is not developed yet, it cannot be causing the harm you are concerned about. I do not see it doing that. Can it also be a feeder? If people start gambling online, they may want to come to Las Vegas to experience the real thing.

Chairman Hansen:
I do not want to waste Committee time on the explanation of the PokerStars incident. You can probably meet with him privately. Mr. Uithoven, if you keep it very brief, you can explain it here.

Robert Uithoven:
PokerStars has been and continues to try to get established in any state and jurisdiction they can. Here in Nevada, they distributed thousands of dollars in illegal campaign contributions to legislators. In regard to the question about the danger, the Federal Bureau of Investigation has stated that you cannot secure these online gaming sites well enough to protect kids from getting online, or from preying on those who should not be online. Furthermore, there is no better regulation of our gaming industry than human interaction, which takes place with all of our licensees in Nevada every day. The human interaction of watching patrons on our gaming floors is required to provide a thorough and robust regulation for our industry, and to protect our industry while maintaining Nevada's gold standard. You simply do not experience that with someone online from their apartment anywhere in America.

Assemblywoman Diaz:
I was on the Committee to Conduct an Interim Study Concerning the Impact of Technology Upon Gaming. This bill sounds to me like it should have been vetted during the interim. I am wondering what the reason was for this concept not coming to the interim committee so that all stakeholders could have an equal say as to what the implications are for us narrowing it to only poker. The interim committee had several meetings. Therefore, I am not understanding why this was not vetted with key stakeholders on that committee, during that time?

Robert Uithoven:
After this legislation was signed into law, we had been monitoring it to see the impacts of it. We have had a number of attorneys review A.B. No. 114 of the 77th Session and its implications. We also monitored the good work you did on that interim committee. Giving this law some time to play out, monitoring the application process for online poker licensees, and watching how this has developed over the last few years was an important process. It was ongoing while the interim committee was in session. We know a lot more today, and if nothing is done now, we will learn even more. I think it will be to the detriment of those engaged in proliferating online gaming.

It has taken some time on our end. We monitored those hearings, although we did not bring this legislation forward. There were a few members of the committee that we were communicating with throughout the hearings. We constantly monitor the revenues that come into Nevada, and we monitor the compacts that are negotiated and signed. All I can say is we are in constant communication with regulators and other licensees in the business. We needed some time to see the impacts of A.B. No. 114 of the 77th Session. It has lead us to where we are today.

Assemblywoman Diaz:
You are basically telling us that there have been some negative consequences of A.B. No. 114 of the 77th Session being passed. Can you please point to the data that backs up your claims? What I am hearing is you are saying that you did not have time or it just came up for us to see these negative impacts. I just need to see it in numbers. What came up these last few months that says that we need to draw this bright line in this area?

Robert Uithoven:
There are no numbers at this time because nobody has tried to expand beyond poker as of yet. I will tell you that one of our gaming licensees is very active in Washington, D.C., lobbying for online poker here in Nevada. However, moving to other jurisdictions in other states, they are trying to expand to full online

gaming. Before that gets too far down the road, we are trying to go back and say A.B. No. 114 of the 77th Session was pitched, passed, and signed into law as a poker-only bill. We want to put that clarification in place today to prevent the proliferation of other games beyond poker. There is no data on what revenues are coming from games other than poker. We do have the numbers on what poker has generated. It has fallen well below expectations. I am happy to provide that to you, and I will.

Chairman Hansen:
Is there anyone else who wishes to testify in favor of A.B. 414? Seeing no one, we will move to the opposition testimony. I will limit that testimony for obvious reasons.

Michael Alonso, representing Caesars Entertainment:
We oppose A.B. 414. It is important to note the original bill for interactive gaming was passed by the legislative body in 2001. It is more important to note that the definition of interactive gaming included all gambling games, and that happened in 2001. There was no opposition at that time. The definition of interactive gaming has been amended slightly a few times. In 2009, in connection with the PokerStars incident, it was clarified to include poker. It has always included all gambling games.

I would like to talk about A.B. No. 114 of the 77th Session, which was brought up earlier. That bill did two things. It allowed the Governor to compact with other states on Internet gambling. It did not say poker only; it said Internet gambling, which is defined as all gambling games. The other thing it did was to put in what we call "bad boy" or "rogue operating" covenants to prevent PokerStars from coming to Nevada. Because of PokerStars, Nevada added a provision that if you executed certain acts, you could not get licensed in Nevada for some period of time. That was directly related to PokerStars. Those are the two things that the bill did. There was nothing in the bill that said it was for poker only. Poker went live in Nevada after that bill, and by regulation the Nevada Gaming Commission only allows poker. Because of that regulation, the Governor can only compact with other states on poker. The compact in effect now with Delaware is for poker only because Nevada Gaming Commission regulation is limited to poker only.

It is also my understanding that since interactive gaming, including poker only in Nevada and all games in Delaware and New Jersey, went live in approximately 2013, there have been no major issues with respect to underage gambling, cheating, fraud, and problem gambling. That is a real-world experience because up until that point, no one really knew what it was going to do. Now that we have regulated it, all three jurisdictions that are regulating Internet gaming right

now have reported no material instances of any kind in the areas I just mentioned.

Going back to what is the state law in Nevada, the short answer is that it is Internet poker only. By regulation, the Gaming Commission has limited Internet gaming in Nevada to poker only. What would have to happen? An interested party would have to petition the Gaming Commission to change the limitation to add any other type of gaming other than Internet poker. At that point, the Gaming Commission could decide what to do with the petition. They could deny the petition; they could seek input from the State Gaming Control Board; they could hold workshops and public hearings, gathering input from all stakeholders to decide whether or not to expand beyond Internet poker. That has not happened yet, and nobody has petitioned the Commission. We believe that is how it should work. It is in the hands of the regulators. We are the gold standard, as Mr. Uithoven has said. Why would we want to take that discretion away from the Gaming Commission? They are in the best position, along with the Gaming Control Board, to make those decisions about Internet gaming.

From our standpoint, A.B. 414 is just not necessary. Nothing is broken, and we do not know what they are trying to fix. It creates a new definition of Internet poker which is already defined in the regulations. Unfortunately, there are different definitions between what this bill has and what is currently in the Gaming Control Board's Operation of Interactive Gaming Regulation 5A.020, subsection 9, in regard to poker. It just creates confusion by creating a separate definition of interactive gaming. The actual definition that has been around since 2001 has not been touched.

It also seems to limit what Nevada can do with technology and gaming over the Internet. We are the gold standard in gaming. Therefore, why would we want to limit what Nevada can do, making Nevada less competitive with other states?

Josh Griffin, representing MGM Resorts International:
We are in opposition to A.B. 414. Mr. Alonso's testimony describes very well where MGM Resorts International stands on this. I cannot just stop there. I would like to brag about MGM Resorts, in particular, as it relates to some of the testimony I have heard. MGM Resorts is the largest employer in the state of Nevada. It has made more brick-and-mortar investments than any other company in Nevada. Although we currently do not have an online product, we do trust our Gaming Commission and the gold standard that we have all helped to create. This bill seems to try to fix a problem that does not exist. We are still the gold standard and will continue to be. That is why we are here in opposition to A.B. 414.

Russell Rowe, representing Boyd Gaming Corporation:
We are in opposition to this legislation. Boyd Gaming Corporation is not the largest employer in Nevada, but it has over 12,000 employees. We do not like the record to reflect any implication that Boyd Gaming would enter into any type of business activity that would undercut or threaten its infrastructure or its 12,000 employees. Boyd Gaming also happens to be experienced in interactive gaming in New Jersey. As you know, Atlantic City has had significant struggles with maintaining properties and keeping them opened, mostly due to competition from other brick-and-mortar establishments along the East Coast. One thing that Boyd Gaming has found thus far with its interactive gaming product in New Jersey for the Borgata Hotel is that the product has actually drawn customers into the Borgata Hotel. Unlike the testimony of Mr. Uithoven, we have found that having the product online has actually enhanced the ability of the Borgata to maintain its operations and profitability in New Jersey. It is a very young industry and there are a lot of question marks and things to be learned. In our experience, it does not cannibalize the brick-and-mortar shops.

Assemblywoman Fiore:
Thank you, gentlemen, for being here today. Sometimes, being legislators, we do not know who is partnering up with who, and who is doing what. When we hear testimony, we want to be fair and offer free market to all. I voted on A.B. No. 114 of the 77th Session because I was under the impression that the Internet was for poker only. Therefore, that is how I understood it. Is Caesars Entertainment partnering up with PokerStars?

Michael Alonso:
Do you mean partnering up on interactive gaming?

Assemblywoman Fiore:
However you want to address it. Is Caesars Entertainment in any type of partnership with PokerStars?

Michael Alonso:
Based on my knowledge, Caesars Entertainment is partners with 888 Holdings, which is a licensee in Nevada with Internet gaming. I do not know of any partnership with PokerStars with respect to operating Internet gaming.

Assemblywoman Fiore:
The reason for that question is because as a legislator, I really want to make sure that these are sound bills and not bills for financial benefit for big corporations. Do you understand my concern?

Michael Alonso:
I understand your concern.

Assemblyman Jones:
I am a little confused about the expansive definition of gaming, which could include a lot of things that may be developed in the future in the scenario definition which is only Internet poker. Your testimony was that the bill is more expansive, but this is trying to limit it at the legislative level. However, the regulation has already limited it to a very narrow definition. Why has the Gaming Commission or Gaming Control Board not limited it to a narrow level if the actual statute is more broad?

Michael Alonso:
Going back through the history, in 2001, when interactive gaming was passed, it was with the broad language that interactive gaming meant any gambling game. There were also conditions on that statute because at the time it was not clear whether or not interactive gaming was legal under federal law. There were other provisions in the statute for the Gaming Control Board, who were supposed to have discussions with the Department of Justice to determine whether Nevada could move forward with interactive gaming. That did not happen until 2013. You are correct that the Commission, the Board, and the industry wanted to start this slowly with Internet poker. That is why Internet poker was put into regulation, and that is what we went live with in 2013.

Assemblyman Elliot T. Anderson:
I wanted to comment on PokerStars. They admitted no wrongdoing and entered into a settlement. The government has acknowledged that they can participate in activities through the framework that we or others have created. Therefore, I do not know that it is proper to browbeat on them today, because I do not feel it is really that relevant to the bill. I feel as though it is distracting us from the issue. I just want to clarify that on the record.

Chairman Hansen:
The bottom line is that our understanding of A.B. No. 114 of the 77th Session is that it was limited to just poker. Consequently, I am wondering why you gentlemen have not yet brought forward a bill to expand it.

Josh Griffin:
I think Mr. Alonso has articulated this. We see the current definitions allow for online gaming, and that there is no need to expand that definition. It is the Gaming Commission that has entered into these agreements. The way we read it, this bill is intending to restrict the definition. We feel the definitions the way they already exist are appropriate.

Chairman Hansen:
Regarding the testimony given earlier about what the Governor said, I was there and I remember that. The Governor clearly said this will be limited to poker. My biggest regret is that we rushed that bill through without thoroughly vetting it. Was the Governor in error when he testified before this Committee in 2013 on that bill?

Josh Griffin:
No, and I apologize because I was not here for the testimony. It is my understanding that it has allowed for and the Gaming Commission has limited the policies to online poker currently. I do not think there was any error. We just think this bill is limiting those definitions from what currently exists.

Michael Alonzo:
I think it was clear from the industry's perspective and from the Governor's perspective that it was poker only. Compacting really only makes sense for poker because Nevada is a small state. You need the liquidity to make poker work. As I said earlier, the 2013 bill talked about two things. It had the rogue operator language, and it authorized the Governor to enter into compacts with other states. I think when the Governor said exclusively poker, he meant it. He meant it from a regulatory perspective because, at the time, we knew it was going to be difficult for online poker in Nevada, given the size of the state. The compacting made sense in being able to get more players on that network for liquidity purposes. I look back on A.B. No. 114 of the 77th Session as doing two things. It allowed the Governor to compact and put a bar up so that companies like PokerStars could not get here easily.

Assemblywoman Seaman:
I apologize that I missed part of this meeting because I was in another meeting. I did write down a few questions earlier that I would like to ask because it was a little confusing to me. Since the Commission is the authority to determine whether interactive gaming is limited to Internet poker or to expand it to other Internet gambling games, should the authority stay with the Commission?

Michael Alonzo:
We absolutely agree that the authority should stay with the Commission. Along with the Gaming Control Board, they are the in the best position to get public input if they ever decide to try to make a change and to make the determination.

Chairman Hansen:
Is there anyone else who has anything to add to the testimony in opposition? [There was no one.] Is there anyone in the neutral position? [There was no

one.] We will close the hearing on A.B. 414. We will go to Assembly Bill 434 at this time.

Assembly Bill 434: Enacts the Uniform Fiduciary Access to Digital Assets Act. (BDR 12-1094)

Benjamin Orzeske, Legislative Counsel, Uniform Law Commission:
I think most of you are familiar with the Uniform Law Commission (ULC). Normally it would be Commissioner Terry Care presenting this bill. Commissioner Care asked me to present today because I was more familiar with the details of this act. He is travelling today and is unavailable to be here. Assemblyman Ohrenschall is also a commissioner, and I understand he could not be here this morning. Therefore, it is just me.

Thank you for considering Assembly Bill 434. This is a new uniform act which was approved last summer by the ULC. It has been a popular topic and has been introduced this year in 28 different state legislatures. It has to do with what happens to our digital assets when we die or become incapacitated to the point that we no longer can control them ourselves. The reason the law is necessary is because the law has not kept up with the changes in the nature of our property. A generation ago, we kept all of our photos in photo albums, we kept all of our documents in filing cabinets, and we had a human being that delivered all of our mail. Today, most of us use the Internet for some or all of those purposes. It becomes a problem when we die or when we become incapacitated to where we cannot handle our own property anymore.

We have a very good system in place for dealing with a person's property when they can no longer deal with it themselves. We have a court appoint somebody for them, and depending on the exact circumstances, that person may be called an executor, conservator, or trustee. What they have in common is they are subject to a series of fiduciary duties imposed by the court to act in the best interest of the person or estate they represent. We are using the generic term of fiduciary in this bill to describe all of those types of people.

Traditionally, the person appointed by the court will step into the shoes of the decedent, which is the common law term. They would then have all of the rights the decedent had before the decedent died. For instance, that person can close your bank account and distribute the money to your heirs or according to your will. The person could sell your house or empty your safe deposit box.

This law does not break any new legal ground. It says that same person subject to that same oversight by the court, along with all those usual fiduciary duties, should also have access to your online accounts. Sometimes those online

accounts can have real monetary value for the estate. For instance, it could be a domain name you own or online documents belonging to a business of a decedent. Sometimes it is just for an administrative task such as closing someone's Netflix account or PayPal account and withdrawing whatever balance there is. Sometimes it may be an asset of sentimental value such as family photos that were uploaded to Facebook instead of being stored in a photo album. Under this bill, the same person who would be administering the personal property would then have access to those same types of online assets.

This bill has been introduced widely, but it has also been opposed strongly by a couple of large Internet firms. I think you will probably hear from them in opposition today. They have been successful in delaying it or getting it sent to a study in a number of states where the legislation was introduced. The reasons for their objections tend to be in three categories. They are privacy concerns, a conflict with federal law, and overriding the provisions of a contract between private parties. I want to take time to address each of those three objections in detail.

First of all, let me digress just slightly to talk about the drafting process. The ULC started working on this project about three years ago. All uniform laws are drafted in an open, public process where we invite all stakeholders to the table. The same firms testifying in opposition to this today were at the table for its drafting and were very helpful in many respects. They wrote a lot of the language in here dealing with the aspect of the federal law. However, the drafting committee of Uniform Law Commissioners did not give the representatives of the firms everything that they wanted. They thought it would have been poor public policy. At the end of that two-year process, those firms withdrew formally and drafted their own legislation that they are offering as a strike-all amendment in many states. That is their right to do that, of course.

However, I want to be clear about how the bills were drafted. This was drafted by the UFC, which is a nonprofit and nonpartisan organization of volunteer attorneys appointed by the states. The alternative legislation was drafted by the industry.

Now, I will get into the objections. Under this legislation, I want to be clear that 100 percent of your online assets can remain private, even from the executor of your estate, if you choose to do so. The difference between our approach and the industry's approach is who controls that decision. Under the uniform law, you have control of the digital assets, just as you do with your physical assets once you are gone. You can do that in a number of different ways. You can do

it traditionally by putting it into a will or trust. You can name somebody or say that you want the account to be deleted. The innovative part of the uniform act is that you can also use an online tool, which essentially is a check-the-box option online. You can say, if my account is inactive for some period of time, I want you—the company—to delete everything in it, or I want you to contact this person at this email address. Essentially, you would name a beneficiary and give him or her control. The uniform law's approach to that allows that sort of feature to be offered to an account holder. If that is offered and used by the account holder, it supersedes anything in the account holder's will. That relieves the company from the burden of having to review any estate planning documents if they offer this option.

The one requirement we had with this option is that you cannot bury it in the terms of service on page 117 of a 130-page document and then say that the account holder agreed to it when they clicked through it. There has to be a separate choice from the terms of service agreement that the account holder knowingly makes. If they make that choice, they can direct the company to delete those digital assets or to direct them to a particular beneficiary. Two of the major companies are now offering this sort of tool. Google and Facebook have recently started offering it. I suspect that if the legislation passes, other companies will go that route as well. That seems to be the logical alternative. It would be a good thing for more people to start thinking about what happens after they are gone.

Chairman Hansen:
I met earlier today with the people who are going to testify in opposition. Is there any common ground between this and what they want? What I told them is that we are running out of time, and they seem to have some pretty legitimate objections to it. Have you worked in other states on this issue? If so, has there been any compromise between the two parties?

Benjamin Orzeske:
We have tried but have been unable to find compromise so far. We had offered some amendments to legislation in Florida that we thought addressed some of their concerns. However, it was not enough to gain their support. Likewise, the alternative legislation that they have drafted simply does not solve the problem. We have been unable to do it.

Chairman Hansen:
Just so that you know, in all the time that I have been sitting on the Committee, when Mr. Care presented uniform acts, I do not remember any opposition at all. I am surprised because these uniform acts usually just breeze right through because they have all been very thoroughly vetted. That is why when these

gentlemen came to me, I was surprised. I was just hoping that we would get you all to work this out.

Benjamin Orzeske:
We would certainly like that too. You are absolutely correct that we usually work in very sleepy areas of the law where there is not a lot of controversy. We try to vet all those problems in the drafting process. Unfortunately, they were at the table but we did not give them everything they wanted. Therefore, they have chosen to oppose it at this stage instead.

Chairman Hansen:
I did not mean to interrupt. Did you have more to go over before we move on?

Benjamin Orzeske:
Yes, I will be brief. I will move on to the conflict with federal law. There is a federal privacy law that is known as the Electronic Communications Privacy Act (ECPA). It was enacted in 1986 by the U.S. Congress. It deals with a small subset of digital assets called electronic communications, which is what we would think of as emails or a text message between private parties, although, in 1986, the technology was much less developed and some of the language is a little bit unclear.

The question is whether or not fiduciaries have access to that. One legal perspective for trusts and estates would say that, of course, they do because the fiduciary has access to whatever the decedent had access to. The fiduciary steps into the decedent's shoes and if he can sell the decedent's house and empty the bank account, surely he can access his emails. Step one of administering an estate is usually to forward the decedent's mail. That is how the fiduciary will oftentimes find out if the decedent has done any planning or where he banked or what bills he owed. Now that we are all being urged to go green and get electronic statements, administering an estate, where there was no planning, is pretty close to impossible without access to emails. It is a natural extension of the fiduciary's duties.

What the tech firms have argued in other states is that there is nothing in the black letter of the federal law that says that they can release it to fiduciaries. We accept that as absolutely true. There is also no federal law that says the fiduciary can sell your house, although it is usually not an area where Congress legislates. However, there is an effort underway with the American College of Trust and Estate Counsel who have petitioned Congress trying to get them to amend that law. The Uniform Law Commission supports their effort. We are trying to get that done but, in the meantime, what we have done with the uniform act is to simply defer to that federal law. We also say that

the company does not have to release anything restricted under federal law. If you are allowed to release it under federal law, and you receive a valid request from a fiduciary appointed under state law, the company would have to release it.

Finally, on the issue of contract interference—the contracts that we are speaking of are the click-through terms of service agreement—the uniform law defers to that contract in just about every respect. For instance, ownership gets a little fuzzy when dealing with digital assets. If I print a photograph on paper, there is no question that I own it. If I upload it to Facebook, the terms of the service agreement give me some rights and also give Facebook some rights to that photo. The uniform law gives the executor of the estate only the same rights that the decedent had. It does not reduce Facebook's rights in any regard. It says that if the decedent, while he was alive, could have downloaded a copy and closed the account, the executor has to be able to do that same thing.

The one area where we do not defer to the terms of the service contract is if there is a blanket prohibition that allows for no fiduciary access whatsoever. One of the major companies that has that provision in their standard terms of service is Yahoo. If they receive a death certificate, they automatically delete everything. Therefore, if you have been using Yahoo to receive your mail and financial statements, it makes it impossible for the executor to administer your estate. We say that is against public policy unless the user agreed to it by that separate check-the-box tool aside from the terms of the service agreement. That would be valid if the decedent directed it. We are just trying to execute the decedent's wishes.

[Also submitted as exhibits were a copy of the Uniform Fiduciary Access to Digital Assets Act with comments (Exhibit P) and summaries of aspects of the Uniform Fiduciary Access to Digital Assets Act (Exhibit Q).]

Assemblyman Elliot T. Anderson:
I have seen that Delaware did adopt the model law. I am wondering if any other states have. If so, I am curious as to the effects or any interesting problems or issues that have come up as a result.

Benjamin Orzeske:
I wish that I had some history to provide. The Delaware law went into effect January 1, 2015. We were hoping that we would get some legal history to see how it has been working there. So far, I do not have anything to report.

Chairman Hansen:
Is there anyone else who is going to testify in favor of A.B. 434? Seeing no one, we will move to the opposition.

Dan Sachs, Associate Manager, State and Local Public Policy, Facebook:
I think that Mr. Orzeske did a pretty good job at teeing up the concerns that we have with this bill. As I hope to explain, there is good reason for our objections. This is not just the objections of companies like Facebook, Amazon, Apple, Google, Yahoo, and AOL, which are united in opposition. We are joined in opposition by a coalition of privacy and civil liberties organizations including the Center for Democracy and Technology, the Electronic Frontier Foundation, Consumer Action, and the American Civil Liberties Union (ACLU).

There is a federal law that says that the contents of electronic communications cannot be disclosed by a provider except in certain exceptions. It creates a federal private right of action with tremendous liability for a provider that violates that ban. The exception that is applicable in this circumstance is for the consent of an account holder. If we have the consent from someone to turn over his communications, we can do that consistent with federal law. This bill, in section 32, subsection 1, paragraph (b), contains a provision that says a fiduciary is deemed to have the consent of the account holder for the disclosure of his communication under the federal law. However, three decades of precedent says that no court of law can simply wave its hand and say that you consented to disclosure of your communications. You actually have to consent as a matter of fact, says the United States Department of Justice and the prosecuting cybercrimes manual it uses to train U.S. Attorneys, and the California Courts of Appeal in an October 2014 decision, reviewing the entire case law under the Electronic Communications Privacy Act.

Do not just take the word of the California court, the Department of Justice, and my word for it. Take the word of the probate bar itself. In a letter written on January 28, 2015, the American College of Trust and Estate Counsel asked U.S. Senator Jeff Flake and Representative Darrell Issa to amend the Federal Privacy Act of 1974. Let me quote from that letter: "The privacy protections of the ECPA are an obstacle for fiduciaries needing access to the contents of a person's electronic communications stored in online accounts." The letter also says that "the potential civil damages have created a significant chilling effect on providers when dealing with fiduciaries requesting the contents of a person's electronic communications." This bill rests on a legally invalid theory of deemed consent, which means that companies cannot comply or they face tremendous federal liability. When the probate bar tells you that this bill does not create compliance problems under federal law, it is contradicting its

own representations to Congress when it asked for the federal law to be changed.

Another concern is that this bill does not just require the disclosure of contents of communications; it actually requires giving fiduciaries the ability to log into other people's accounts. Facebook does not permit something like this. We do not permit you to log into someone else's account or let someone else log into your account for a very simple reason—it could lead to things like impersonation, stalking, fraud, or harassment. Therefore, our terms limit that type of logging in to someone else's account as a critically important security measure. This bill would say that those types of measures in our terms of service, which protect your constituents against online fraud and harassment, are void against the strong public policy of the state, and so is our choice of law clause if the law chosen would enforce those security measures. In addition, stripping terms of service and choice of law provisions from freely negotiated contracts is an extreme and rarely used exercise of your legislative power. Doing so, in any circumstance, invites other states to interfere with Nevada's businesses contracts. Doing so to avoid cybersecurity protection terms in a company's terms of service, which your constituents rely on to keep them safe, would be unprecedented.

The other problem is that there are services that do have very good reason to promise that they will not give up your messages without the consent of not just one but both parties to a communication. Think of an online dating app, an Alcoholics Anonymous (AA) forum, or a domestic violence support group that happens to be online. Should these services be able to promise people that they will not let the person on the other side of a communication pass along your private communications without your consent? We need to think long and hard before we tell online dating apps, support groups and forums, and other services that they simply cannot create a safe space online for your constituents' most sensitive communications.

As I hope I have explained, this issue is very complicated, and that is why this bill has not passed in any state this session despite nearly 30 introductions. Nevada should not volunteer to be the guinea pig this session.

Chairman Hansen:
You folks are from Washington, D.C., and you are obviously following this bill around the country. Is there no room for compromise here at all? There have been 30 states who have shot it down, and only Delaware has enacted it?

Dan Sachs:
The model bill that was drafted by industry as well as the civil society groups became law in Virginia either last week or the week prior. Frankly, it did have a significant input from the Trusts and Estates Section of the Virginia State Bar. We do think there is room, given the stakeholders that have brought various concerns and the help in many situations from the local probate bar for some states. There is room to enact bills that are workable and will address any problems there may be for fiduciaries.

Chairman Hansen:
With the uniform acts, how much flexibility do the proponents have to adjust it? I will ask Mr. Orzeske later.

Joe Dooley, State Policy Manager, Google:
I appreciate the opportunity to be here today to speak with you about A.B. 434. With more activity occurring online every day, a much more detailed history of one's life interactions is maintained. While account holders are alive, control of this information is understood to be at their discretion. However, after their death the situation changes significantly. Assembly Bill 434 seeks to change postlife account management in a way that infringes on the privacy of the account holder and grants too broad of a discretion to the executor. Today I would like to describe three things: Google's commitment to user privacy, issues related to the effects of A.B. 434, and questioning the need to overhaul probate law in this way.

Google has a dual responsibility to protect the privacy of our users who have actively chosen to secure their personal account information through passwords and other security measures, while at the same time working with the probate courts to close decedent accounts. Google's terms of service do not allow disclosure of the contents of electronic accounts without the express permission of a user or as ordered by a court. To provide users a choice as to how we treat their electronic accounts after they pass away, Google established Inactive Account Manager, which allows users to make an affirmative choice and designate someone who can access selected accounts after their death. If a user does not set up an Inactive Account Manager, under federal law and our terms of service, Google must assume that the user wanted the contents of that account to remain private. Unfortunately, A.B. 434 compromises the privacy of Nevada citizens by enabling unfettered access as to the contents of their online accounts, including access to information which would not be relevant to the closing of an estate.

Inaccurate analogies have been drawn between online accounts such as email and the shoebox of letters kept on a shelf in someone's closet. There is

a significant distinction between these two things. First, the box of letters does not include drafts of letters sent, all of the correspondence a person had over the course of many years, or any letters that were thrown away. An email account, on the other hand, might include all of these examples. The divulging of conversational emails between friends or perhaps sensitive discussions between a user and his spiritual advisor, an AA sponsor, or a medical provider, serve no purpose in closing an estate but could be disclosed.

Chairman Hansen:
Mr. Dooley, we all use email and have a pretty good idea of what could be out there. I would like to have you stop at this point unless you have something new to add that has been totally missed.

Joe Dooley:
I think the scope of this problem is not as significant as it seems. More than 2.5 million people died in the United States last year. Google received only several hundred requests for email account contents. We do not think it is as big a problem as it is made out to be where we need to remake probate law. In addition, a recent poll that NetChoice—an organization which we and other companies belong to—determined that more than 70 percent of Americans polled online believe that their online communications and photos should remain private after they die. Only 15 percent believe a state attorney should control their private communications and photos.

Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties Union of Nevada:
I will not repeat the testimony we have heard thus far. We are also concerned about not only the privacy of the decedent but also of the third parties implicated. We have talked about that a lot already. You join an AA group online and just because someone else in that group dies does not mean that people should know you were in the group if you want to keep that private.

The nonnegotiable part of this bill is that it sets the default at no privacy. We believe that individuals should have the right to make an autonomous decision about who they choose to share their information with. It should not default to all of your information being shared. I think that is the critical component that we cannot negotiate on.

The other thing I will note is that this bill does not just deal with decedents. Section 29 has to do with conservatorships, which are for people who have disabilities. We also believe that people with disabilities should have the right and should be autonomous enough to decide what they want to do with their

online content. We also support the alternative bill that was passed in Virginia. We would offer that as an alternative to this bill.

Assemblyman Elliot T. Anderson:
What do you do when someone dies? Does the data just sit in storage for perpetuity?

Dan Sachs:
Before about a month ago, the answer was that Facebook would memorialize your account upon notice that you had died. This means your account would be locked down so that no one could log in and impersonate you. People still would see the same things they saw before but no alterations on a foregoing basis could be made. Also, the next of kin would have the option to use a form that we provide online to request the removal of the account. Another thing to note is that for several years, we have had a tool called Download Your Information. This says that while you are alive, you can download all the information associated with your Facebook account at any time. That can become your personal property and you can do whatever you want with it as personal property.

We recently launched a feature called the legacy contact. That allows every Facebook user to designate essentially a digital executor who can do things like managing the profile after you die. If you prefer, you can designate that your profile be deleted after you die. You can also designate someone to download select portions of your account, including posts and photos that you have shared. This would not include your chat messaging because of the concern about the potential sensitivity of the person on the other end of those communications.

Assemblyman Gardner:
I found it kind of interesting that you are fighting so hard for privacy concerns when it was only a few years ago where we heard that Google and other tech companies were actually using personal data to make money off of us. You made all of these comments about all of these terrible things that can happen if this bill passes. Can you tell me what happened in Delaware? Has it blown up? Have these things happened in Delaware?

Dan Sachs:
Despite the variety of business models that the opposing companies have, they are all bound by the federal law which says that whatever we want to do in terms of disclosing the contents of someone's communications must be founded on the consent of the account holder. If we do not obtain that consent, there is tremendous liability. For that reason, we have been voicing

the concern that were we to receive legal process under this law, or under the Delaware law, seeking contents of communications that we could not disclose because federal law prohibited it, we would have to refuse to provide those records. That would lead to a litigation process. I understand that litigation is costly and most estates are trying to be settled inexpensively. Unfortunately, that is the position that we are in. We are not looking to thwart the settlement of estates. We are simply bound by federal law, which creates a tremendous potential for liability.

Assemblyman Gardner:
It is my understanding that by using the click-through contract, you already have the ability to access that information. Are you saying that in that click-through contract you are not amenable to allowing people's designees to access it?

Dan Sachs:
Facebook has terms in our contract that say that you will not log into someone else's account or let someone else log into your account. Those are the provisions that we would rely on in refusing to provide access. We think that will protect the security of users. Those terms are not in there to thwart the settlement of estates. We are not interested in doing that as part of our business.

Chairman Hansen:
Mr. Dooley, I assume that Google handles it a similar way.

Joe Dooley:
Yes, very similar.

Chairman Hansen:
Is there anyone else who is in opposition?

Marla McDade Williams, representing Amazon.com:
I wanted to let you know that I was the one who forwarded the information from the State Privacy and Security Coalition, Inc. (Exhibit R) which was uploaded to the Nevada Electronic Legislative Information System (NELIS). Amazon.com is in opposition to the bill.

Chairman Hansen:
If you would like to use my office, I would like to see if you can work out some sort of compromise. Hopefully, you can do that. As I said, Friday is the deadline. I would like you to take some time to try to do that.

We will now close the hearing on Assembly Bill 434 and open up the hearing on Assembly Bill 433. We are going to close this hearing in 45 minutes. I will give each side as much reasonable time as I can.

Assembly Bill 433: Revises provisions concerning the interception of wire, electronic or oral communications. (BDR 14-913)

Christopher J. Lalli, Assistant District Attorney, Office of the District Attorney, Clark County:

On August 26, 2013, members of the Las Vegas Metropolitan Police Department (LVMPD) responded to a domestic violence call involving a firearm. Those happen to be the most dangerous types of calls that members of law enforcement respond to. An officer arrived, and a white male was at the door carrying a shotgun. The officer ordered the man to drop the shotgun, and he complied. He began to look behind him and requested the help of the police officer. Just then, a ten-year-old girl exited the home carrying a small pistol. She was crying and dropped the pistol in the driveway of the home. The police officer moved the man and the little girl away from the door of the house. Next, a woman came to the door, with a gun in her hand, and was yelling at the police officer. She walked back into the house and closed the door. She also closed a metal security gate to the home. The metal security gate had a large mesh covering over the door, and it prevented the police officer from seeing into the house where the woman had returned. She later appeared at the doorway, holding an infant in her arms. The woman repeatedly told the police officer that she was going to shoot the child and then herself. The officer did an excellent job talking to the severely mentally ill woman. He continued to engage her in conversation for almost an hour until the SWAT team could arrive and take charge of the scene.

When SWAT arrived, they quickly realized that it would not be an easy scene to manage. It was approximately 1:30 in the morning and visibility was extremely bad. There was a security gate on the front door of the house. There were coverings on all of the windows preventing any member of law enforcement from being able to see into the home. They were dealing with a severely mentally ill person, she was armed, and they had been informed by the woman's husband that there were two young children, one and two years old, inside the home.

The SWAT commander needed real-time information on how to manage the scene. Where was this woman within the confines of the home? What part of the house was she in? Where were the two children in relation to this woman? Was she saying anything to the children? Was she suicidal? Was she saying

anything to herself? Was she talking on the phone? Who was she talking to? What was she saying?

Had Assembly Bill 433 been enacted, the SWAT commander would have had all the answers to these questions in a quick and efficient manner. Instead, this hostage encounter lasted for 22 hours. Eventually, the SWAT commander heard gunshots from within the residence and ordered his SWAT team to enter. Fortunately, the two children survived the encounter as well as the female suspect.

Assembly Bill 433 provides modest changes to our state wiretap statute. The current statutory scheme was created in 1973 and has not been updated from a technology standpoint since then. I ask all of you to consider whether you have and use a cell phone. In 1973, no one was using a cell phone. I cannot emphasize enough how important it is for us in Nevada to keep our statutes in line with current technology trends. To emphasize this point, there is a case pending before the Nevada Supreme Court, *Sharpe v. State,* [subsequently cited as *Sharpe v. State*, 131 Nev. Adv. Op 32 (2015)]. That case prompted our Nevada Supreme Court to request amicus briefs from the Nevada District Attorneys Association and the Nevada Attorneys for Criminal Justice, directing them to answer a question. The question is whether the Nevada wiretap laws allow for the interception of cellular calls and Short Message Service (SMS) text messages under *Nevada Revised Statutes* (NRS) 179.460, which is the Nevada wiretap statute. This is a warning to all of us that our wiretap statute is outdated and needs to be made current to keep step with current technology trends. That is precisely what A.B. 433 does.

This morning I have heard the Chairman request that various bills be worked out between people who are opposed and people who are in favor of the bills. The members of this Committee will be happy to know that we have done that with A.B. 433. We have worked with the Clark County Public Defender's Office in crafting the amendment before you (Exhibit S). We have also worked with representatives from the telecommunications industry, specifically CenturyLink and AT&T.

I would like to run through the bill and our amendment. Section 2 of the bill is the definition section. It defines the provision that brings us into the twenty-first century. It adds electronic communications into the wiretap statute. It also defines other provisions to the bill. Section 6 includes barricade situations, hostage situations, or threatening with explosives as exceptions to the wiretap requirement as well as the situation that I described in the beginning of my comments. It also defines barricade and hostage situations. We have worked with the Clark County Public Defender's Office and with LVMPD in

further refining those definitions. It also refines the definition of police officers to limit that definition to category I peace officers. We have worked with the Clark County Public Defender's Office in refining that definition.

Section 7 references the federal Stored Communications Act. It gives us a procedure to get this material. We currently get the material, but there is no procedure to do that. The bill refines how that is done. We have worked with the telecommunications industry to limit liability for providers who give us that information. Section 8 is merely a transition section. Sections 9 through 12 add the words "electronic communications" to various statutory sections. Section 13 allows federal officers to prepare an affidavit in support of a state wiretap. A state wiretap can only be applied for by the elected state Attorney General or the elected district attorney of a county. It cannot be done by his or her deputy.

Sections 14 through 15 further define the definition of oral and wire communications. Sections 16 through 18 add the words "electronic communications" to various statutory sections. Section 18 allows a judge to accept a facsimile copy of a signature of a person who signs the application. This section would be helpful in a situation where the elected district attorney or the elected Attorney General happens to be out of the jurisdiction when a wiretap needs to be signed and he or she is not present to do that. It allows a wiretap to be reviewed and signed while the official is out of the jurisdiction. Finally, sections 19 through 29 again add the words "electronic communications" to various statutory sections.

Chairman Hansen:
Is there anyone else you have lined up to testify?

Christopher Lalli:
No, and I am not sure that there is any opposition.

Chairman Hansen:
I see Mr. Robison of CenturyLink in the audience. I assume that the AT&T folks are fine with it. You can just nod. [Mr. Robison nodded.]

Assemblyman Elliot T. Anderson:
I wanted to thank you because you already fixed my issues. I think the "lawful" part in section 6 of the amendment was exceptionally important. I think the way the original bill was drafted did not take into account the nuances that you would need reasonable suspicion or probable cause in many cases. I think adding the word lawful ties it up very nicely. I get why you are adding that language because it looks like an officer safety bill and recognizes that when we

are talking about the loss of life, we cannot get that back. We have to be able to save lives in a situation like that.

Assemblywoman Diaz:
In section 6, subsection 1, it says, "The interception, listening or recording of a wire, electronic or oral communication by a peace officer specifically designated by the Attorney General...or a person acting under the direction or request of a peace officer." If it is not the peace officer or the Attorney General, who might it be? I would like clarification as to the intent of that language.

Christopher Lalli:
We are talking about the member of law enforcement who is at the scene and responding to the barricade situation.

Assemblywoman Diaz:
The way that I am reading it, it says that the peace officer is given this authority or power to intercept, listen, or record the wire, electronic, or oral communications. Then it also says that a person acting under the direction or request of the peace officer may do so. I just wanted to be sure who this other person would be.

Christopher Lalli:
Those would be members of the telecommunications industry. Those may be members of AT&T or whoever the communications carriers in the industry are. They would be people provisioning the order to intercept the listening device. It is not LVMPD who actually has the ability to set up a listening device. They would be provisioned through Verizon or AT&T, who would also have the ability to listen. They would be doing that at the direction of LVMPD. Does that make sense?

Assemblywoman Diaz:
The way you are explaining it, yes, but perhaps we should tighten up the language a little. It may be a little too vague.

Christopher Lalli:
I would be happy to do that.

Chairman Hansen:
Is there anyone else who would like to testify in favor of A.B. 433?

John T. Jones, Jr., representing Nevada District Attorneys Association:
I just wanted to add a quick "Me too."

Chairman Hansen:
We will now move to opposition. [There was no one.] Is there anyone in the neutral position?

Steve Yeager, representing Clark County Public Defender's Office:
I am also speaking on behalf of the Washoe County Public Defender's Office this morning. Initially, we had some concerns about how the bill was drafted and how broad it was. I want to thank Mr. Jones and Mr. Lalli for working with us. I think the way the bill is drafted now strikes a fine compromise. It ensures public safety and also makes sure these are used in only extreme circumstances. Given that, we are officially neutral on the bill. I thank the sponsors for taking our concerns into consideration.

Chairman Hansen:
Seeing no further testimony, we will close the hearing on A.B. 433. We are now open to public comment. Is there anyone who would like to speak to the Committee at this time? [There was no one.] Is there any Committee business? [There was none.]

Today, we had five bills and we managed to get it done. I am trying to avoid having night sessions. I do not want to limit important testimony or questioning. As you can see, we are up against the clock. Pay attention to the work session documents and if you see any issues, please address them right away. Seeing no further issues, this meeting is adjourned [at 10:35 a.m.].

RESPECTFULLY SUBMITTED:

_____
Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 7, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 66	C	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 98	D	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 195	E	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 224	F	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 267	G	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 297	H	Diane Thornton, Committee Policy Analyst	Work Session Document
A.B. 386	I	Assemblyman Edgar R. Flores	Proposed Amendment
A.B. 386	J	Malcolm Napier, Las Vegas Metropolitan Police Department	Presentation
A.B. 386	K	Assemblyman Edgar R. Flores	Summary of Bill
A.B. 386	L	Las Vegas Metropolitan Police Department	Nevada and Residential Trespassing
A.B. 386	M	Jim Hastings Brokerage, Ltd., Las Vegas	Jim Hastings Highlights
A.B. 386	N	Don Nassif, Dundi Investments LLC, Henderson	Letter of Support
A.B. 414	O	Robert Uithoven, Las Vegas Sands Corporation	Written Testimony
A.B. 434	P	Uniform Law Commission	Uniform Fiduciary Access To Digital Assets Act
A.B. 434	Q	Uniform Law Commission	Summary of the Uniform Fiduciary Access To Digital Assets Act

A.B. 434	R	Marla McDade Williams, representing Amazon.com	Letter of Opposition from State Privacy and Security Coalition, Inc., Washington, D.C.
A.B. 433	S	Nevada District Attorneys Association	Proposed Amendment