MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Eighth Session
February 23, 2015

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:11 p.m. on Monday, February 23, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Mozell Williams, Chair, Nevada Association of Community Managers
Garrett Gordon, Community Association Institute; Olympia Companies; Southern Highlands Homeowners Association
Mike Bajorek, Southern Nevada Property Management LLC
Chris Appel, Shook, Hardy & Bacon, LLP
Jon Leleu, International Market Centers; Live Nation Entertainment; Las Vegas Defense Lawyers
Loren Young, President, Las Vegas Defense Lawyers
Jaron Hildebrand, Nevada Trucking Association

Chad Humason, Manager, McDonald's, Sun Valley
Jesse Wadhams, Las Vegas Metro Chamber of Commerce
Alexis Miller, National Federation of Independent Businesses
Tray Abney, The Chamber
Lea Tauchen, Retail Association of Nevada
Kathleen Conaboy, Nevada Museum of Art, Inc.
Robert Eglet, Nevada Justice Association
Bill Bradley, Nevada Justice Association

Chair Brower:
We will begin the hearing of the Senate Committee on Judiciary with Senate Bill (S.B.) 154. I will take testimony in support for the bill.

SENATE BILL 154: Revises provisions relating to common-interest communities. (BDR 10-725)

Mozell Williams (Chair, Nevada Association of Community Managers):
I acknowledge other community managers here with me who support S.B. 154. Because of Committee time constraints, I will testify on their behalf.

As a community manager myself, I can say the law credit requirement for renewal of a certificate for community managers is often the most difficult credit to obtain. Allowing community managers to earn law credits by attending disciplinary hearings will provide two benefits. The first benefit is allowing community managers more opportunities to gain those hard-to-get law credits. The second benefit affords community managers opportunities to gain insight into the dos and do nots of being a community manager as well as the expectations of them as licensed community managers.

Garrett Gordon (Community Association Institute; Olympia Companies; Southern Highlands Homeowners Association):
We support S.B. 154 and thank Senator Harris for bringing the bill to the Committee. We think gaining firsthand knowledge by attending mediations and commission hearings is beneficial to community managers.

Mike Bajorek (Southern Nevada Property Management LLC):
I am a real estate broker and property manager who supports S.B. 154.

Although I am not certified as an instructor in Nevada, I often work behind the scenes to correct issues between property managers and community managers. Many issues exist not because of a lack of continuing education classes—although, admittedly, there is with law—but because of how licensees treat those recertification classes. Community managers seem to use these classes merely as a method to renew their licenses versus learning new and useful material.

The great value in observing disciplinary hearings is because instruction often occurs on what not to do as a community manager. Watching somebody else get in trouble for something you may already be doing is educational, especially watching someone else learn the hard way. Watching the hearings is far more valuable and educational than taking a written test online.

Chair Brower:
As there are no more witnesses to testify, we will close the hearing on S.B. 154 and open the hearing on S.B. 160.

SENATE BILL 160: Enacts provisions governing the liability of owners, lessees or occupants of any premises for injuries to trespassers. (BDR 3-939)

Senator Michael Roberson (Senatorial District No. 20):
Nevada's tort law with regard to trespassing is well outside the normal range, followed by 42 other states, and thus subjects homeowners, ranchers and businesses to unnecessary lawsuits and damages.

As Nevada works to attract and keep new investment in businesses providing jobs with good wages, reform our education to provide a quality workforce and maintain an attractive tax environment while still providing for State needs, Nevada's tort laws must also be made competitive with those other states that are expanding their business bases.

When it is in our power to remove self-imposed deterrents to new investment and to the success and growth of existing business we must do so. Nevada laws dealing with a property owner's liability to trespassers are a salient and unfortunate example of such unnecessary deterrence.

For most of its history, Nevada law concerning legal duties that landowners owed trespassers was consistent with long-standing common law. Toward

those on the property as an invitee or licensee, the owner owed the duty of rendering the property reasonably safe and warning of dangerous or unsafe situations. In *Crosman v. Southern Pacific Company*, 44 Nev. 286, 194 P.839 (1921), if a person were a trespasser, not an invitee or licensee, the owner was obliged only "not to wantonly or willfully injure [the trespasser] or fail to exercise due care to prevent his injuries" once his presence was discovered.

However, in *Moody v. Manny's Auto Repair and Shimon Peress* in 1994, the Nevada Supreme Court eliminated the differentiation among classes of people who came onto a property and required the exercise of reasonable care toward any person on the property.

Then, in *Foster v. Costco Wholesale Corporation* in 2012, the Nevada Supreme Court doubled down on this approach, confirming that the owner owes the same standard of care to all those coming on the property. Just eight states share this concept: Nevada, Alaska, California, Hawaii, Louisiana, Montana, New Hampshire and New York. The other 42 states follow traditional commonsense laws toward trespassers.

Nevada businesses and ordinary Nevada citizens all face this invitation for litigation and the burden of being liable for trespassers, those with no business whatsoever for entering the property.

Senate Bill 160 would redress this aberrant situation and bring Nevada laws with regard to trespass into the national mainstream. Passage of S.B. 160 will correct this unnecessary additional burden on businesses and citizens.

I have provided just a brief overview of a complex legal issue. Chris Appel of the law firm Shook, Hardy, & Bacon is a recognized expert in trespasser law and will provide you with a more detailed analysis of both our problem and how S.B. 160 will solve it to the distinct benefit of our economy and, indeed, every one of us who owns or hopes to own property.

Chris Appel (Shook, Hardy & Bacon, LLP):
As Senator Roberson outlined, S.B. 160 is designed to return Nevada to the legal mainstream with respect to duty rules for landowners to trespassers. Traditionally, with common law, landowners' duty of care was based on the land entrance status on the property.

There are three types of land entrance status rules: invitee, licensee and trespasser. With an invitee, or someone you have invited onto your property, you have the highest duty of care, which can include searching out and finding latent defects on the property. With a licensee, you owe a duty of reasonable care, which means you owe a duty to report any defects already uncovered. With a trespasser, you owe no duty of care except to refrain from willfully or wantonly injuring the trespasser. These are the traditional rules.

In 1994, the Nevada Supreme Court collapsed all land entrance status rules, abolishing the concept of invitee, licensee and trespasser and establishing a land entrant who comes on the property. You now owe a land entrant a duty of reasonable care. This builds off a rule particular to landlords as dealt with by the Nevada Supreme Court in *Turpel v. Sayles*, 101 Nev. 3, 692 P.2d 1290 (1985), but this approach to the law was thought of as revolutionary and radical.

The Nevada Supreme Court was following the California Supreme Court's decision in a famous case called *Rowland v. Christian*, 69 Cal.2d 108, 443 P.2d 561 (1968). At the time, legal scholars thought the decision would represent a major shift in law in the 1970s. That shift never occurred and, if anything, the trend has been in the opposite direction. In the last few years, state legislatures have moved to codify or freeze rules regarding trespasser liability so that the rules cannot be expanded to this unitary duty of reasonable care.

Nevada is outside the mainstream on this issue. In 2012, the Nevada Supreme Court doubled down by making Nevada the first-and-only state to adopt rules stated in the American Law Institute's (ALI) Restatement (Third) of Torts.

The ALI's Restatement of Torts is a legal encyclopedia for courts. Judges use it when developing public policy and rely on Restatements because ALI is made up of top echelon judges, law professors and legal practitioners.

This situation was a rare case in ALI history because the organization adopted a rule that really was not a rule anywhere else in the Country. The ALI adopted the rule that duty of reasonable care is owed to everyone except for a "flagrant trespasser." The term "flagrant trespasser" was never defined in the Restatement (Third). It does not exist in any state's statute. The Nevada Supreme Court adopted this rule in 2012, inviting likely litigation over what a flagrant trespasser means.

That brings us to S.B. 160. This bill returns Nevada to traditional common law rules which, prior to 1994, were recognized by the Nevada Supreme Court. Traditional common law rules share three general exceptions. First, you owe no general duty to a trespasser, except you cannot willfully or wantonly injure them; second, if you see a trespasser in a place of danger on the property—say the trespasser falls in a pit on your property, you owe them a duty of reasonable care; third, you use the attractive nuisance doctrine, which is widely recognized throughout the Country.

The attractive nuisance doctrine makes a property owner responsible for harm caused by a piece of equipment or by another condition on the property that would be both attractive and dangerous to curious children. Examples of attractive nuisances are tools and construction equipment, unguarded swimming pools, open pits and abandoned refrigerators.

Senate Bill 160 adopts strict criteria verbatim from the Restatement (Second) of Torts which goes back to the all-important ALI Restatements. The Restatement (Second) generally provided the rule which is held across the Country regarding this issue. Most courts adopted the Restatement (Second) as the rule for attractive nuisance. Senate Bill 160 would adopt the rules from the Restatement (Second).

I have submitted to the Committee a statement (Exhibit C) further arguing the need for S.B. 160.

Chair Brower:
To reiterate, S.B. 160 states that a landowner owes no duty, or cannot be liable, to a trespasser who is on the property illegally, except in three circumstances. The first circumstance is where the owner willfully or wantonly causes harm to the trespasser. The second circumstance is where the owner fails to exercise reasonable care to prevent harm to the trespasser after discovering the trespasser's presence in a place of danger. The third circumstance is where the trespasser is a child, and the bill goes into detail there.

I do not read the exception in section 1, subsection 2, paragraph (c) as a codification of the attractive nuisance doctrine. The paragraph does not address the traditional requirement that the child trespasser is on the property because of the dangerous condition—for example, if a child trespasses onto the land to

play in a body of water. I read that the child is on the property and not that the child is attracted to the property because of the condition.

Mr. Appel:
The Restatement of Torts adopted the rule of being lured onto a property, and courts across the Country have moved to not require the enticement or luring. The courts found enticement or luring too burdensome, so the Restatement (Second) adopted the criteria set forth in S.B. 160, which has been widely accepted by the vast majority of states. Every state that has not adopted a unitary duty has essentially adopted the Restatement (Second) rule.

Chair Brower:
The exception found in section 1, subsection 2, paragraph (c) for children is actually a more liberal rule; it does not require that the child be lured on to the property. The rule is only if the child is on the property and encounters a dangerous condition, then the property owner can be liable.

Mr. Appel:
Correct. It is a more lax standard than requiring luring or enticing, as you were describing earlier.

Chair Brower:
The rule is more plaintiff- or claimant-friendly.

Mr. Appel:
Yes.

Senator Ford:
I do not have the same understanding of section 1, subsection 2, paragraph (c). The bill talks about a trespasser being a child injured by an artificial condition on the premise. What about the Girl Scout who comes to my door to sell cookies and gets hurt? She was not invited onto my property. Is she a trespasser?

Mr. Appel:
No. In that situation, the Girl Scout would not be considered a trespasser. A court would look at that as she had an implied right selling wares in front of your door. It would be unlikely her case would fall under the attractive nuisance doctrine. For example, take a body of water on a property. Children should

recognize danger in a body of water, although a swimming pool could be an artificial condition.

Senator Ford:
Which definition would apply to a Girl Scout selling cookies? Would she be a trespasser, a licensee or an invitee?

Mr. Appel:
She would be a licensee. If you own a business, you do not invite every individual to come to your business; you open your store and people come onto your property—they are invitees. You have not invited these people onto your property, but they have a lawful right to be there. It would be for the same reason that firefighters are not trespassing on your property when they are trying to save you—it is because they have a lawful right to be on your property.

It would be very different if the Girl Scout came into your backyard and was fooling around in your tool shed; then she would be considered a trespasser.

Senator Ford:
I am not convinced that would be the outcome of such a case. I would like to see the language reflect that as the outcome. What would be the case for religious people who go door to door? What would be the case when I knock on constituents' doors during campaign season? Are we trespassers? Are we invitees? I do not want this statute to cause unintentional problems.

Chair Brower:
If we assume that the Girl Scout is a trespasser and also a child, the exception provided in section 1, subsection 2, paragraph (c) would likely provide that Girl Scout a way to make a claim.

Mr. Appel:
It depends on the circumstances of what caused the injury to the Girl Scout. If she was tripping on a step, it might not fit the criteria. If it was a wanton injury, any trespasser would fall under the wanton or willful injury. If you push the Girl Scout or set a trap on your property for her, she may file a claim under the first exception.

Whether her case falls under section 1, subsection 2, paragraph (c) depends on the facts and circumstances of what could be called an attractive nuisance. The Girl Scout could also use the law if deemed a trespasser. It would be certain the Girl Scout was a trespasser if you told her to get off your property and she kept coming on your property. It would fall under the second exception if she were somehow in danger on the property, you see her in trouble and do not do anything to help her.

Chair Brower:
Under section 1, subsection 2, paragraph (c), is the duty of the landowner heightened when the trespasser is a child?

Mr. Appel:
Correct. It really depends on whether the injury fits in the criteria, but the whole point of an attractive nuisance doctrine is to impose a heightened duty on the landowner for injuries to children.

Senator Ford:
I am unconvinced the language makes that statement, either for children or adults. I think of the example of the religious proselytizer or the campaigner trying to get out the vote. You mentioned the Restatement (Third) of Torts, and you are correct about the flagrant trespasser wording. Like you, I view the ALI as respected jurists and lawyers who our judges rely upon heavily.

It would be a retreat for Nevada to go back to the 1994 law. Have some states retreated, or have they moved toward the Restatement (Third) of Torts? Are states adopting that landowners should have a unitary duty of care unless you are a flagrant trespasser?

Mr. Appel:
Since 2011, 17 states have codified laws specifically for the purpose of preventing courts from adopting the Restatement (Third) of Torts.

Senator Ford:
Other states have rejected the Restatement (Third) of Torts?

Mr. Appel:
Correct. Nevada stands alone as the only state court of last resort to expressly adopt the Restatement (Third) of Torts approach to this matter.

Senator Kihuen:
What problem is the Committee trying to fix here?

Mr. Appel:
The problem is that under Nevada law, a trespasser can file a lawsuit and the odds are that the suit will be settled out of court. It is a significant burden on all types of property owners, be they homeowners, farmers, ranchers or business owners. All types of property owners could be subject to liability if a trespasser—someone with no legal right to be there—comes onto their property, suffers an injury and then sues. Senate Bill 160 would return Nevada to the traditional common law rules that are widely followed in most states.

Senator Kihuen:
I have a practical concern about walking up to someone's door during campaign season. I am concerned about the Girl Scout, the Mormon missionary and so on. How are average Nevadans to know this law exists?

Senator Roberson:
In each of the examples that Senator Kihuen and Senator Ford gave, the trespasser would be considered an implied licensee. If someone wants to argue that is not the case, as I have said to the Nevada Justice Association, I am open to clarifying the bill's language. We certainly do not want harm to happen to children or other individuals who have a right to be on the property.

It is clear to me that the Nevada Justice Association is feeding these questions to members of the Committee because the Association brought the same example up to me an hour ago. I would rather the Association make these arguments to the whole Committee instead of feeding them through individual members.

Senator Ford:
Some questions did come from the Nevada Justice Association, but I can guarantee you my question about flagrant trespassing did not come from them.

Mr. Appel:
This determines what is the better public policy for the State. Is it a better public policy solution to have trespassers be able to sue a landowner or not? That is the core question the Committee must decide. Trespassers are defined as those who have no lawful right to be on the property.

Senator Hammond:
I cannot speak to all the questions Senator Kihuen brought up, but where Mormon missionaries are concerned, I have served a mission. We are briefed on applicable rules associated with a particular state or country and about using common sense.

Senator Segerblom:
Would most of these cases be covered by insurance?

Mr. Appel:
That is out of my area of expertise, but I believe so. A claim will increase insurance rates, so it would have a wider impact.

Senator Segerblom:
Have studies been done on whether Nevada pays more than other states because we use the Restatement (Third) of Torts?

Jon Leleu (International Market Centers; Live Nation Entertainment; Las Vegas Defense Lawyers):
We fully support the bill.

Loren Young (President, Las Vegas Defense Lawyers):
We support S.B. 160. Regarding the questions about someone approaching someone's house, I agree with Senator Roberson and Mr. Appel. Someone who approaches a house is an implied licensee because: one, a sidewalk leads up to a front door, and two, the front door faces the front yard and is not quarantined off by walls or fences. The situation is along the lines of a meter reader who has an implied license to do those types of activities. Caselaw is clear on that point, and the bill would reflect or take care of those issues.

Jaron Hildebrand (Nevada Trucking Association):
Our industry invests a tremendous amount of time and resources into safety, be it on the roads or at the facility itself. A quick look at our facilities shows a tremendous amount of moving parts: trucks, containers, forklifts. It is easy for even a trained employee who does not exercise due care to get injured. As a result, it is not right for our trucking company to be held liable by a person who is illegally trespassing and gets injured.

Chad Humason (Manager, McDonald's, Sun Valley):
I have had numerous instances when dealing with trespassing. We evict panhandlers because they interfere with our business and customers. We first ask these people to leave the property; if they do not, we call the police, who formally remove them from the property.

About 5 years ago, we had a panhandler regularly in front of our business. One day, the intoxicated panhandler tripped over a bike rack and hurt himself. He filed a suit against us that we handed over to our insurance company. We were still held liable for this individual whom we would have never let onto our property.

People trespass on our property all the time. Two weeks ago at a second restaurant with a PlayPlace, there was a man outside the store. A customer reported that the man was listed in the Nevada Sex Offender Registry. We asked the man to leave. I would not want to be held liable for that man; he should never have been on the property.

Jesse Wadhams (Las Vegas Metro Chamber of Commerce):
The Metro Chamber supports S.B. 160. Changing the duty of care for those who are uninvited is important legislation.

Alexis Miller (National Federation of Independent Businesses):
We support S.B. 160.

Tray Abney (The Chamber):
We support S.B. 160.

Lea Tauchen (Retail Association of Nevada):
We support S.B. 160. This bill will remove an area of uncertainty that can affect business owners' ability to make decisions about their bottom lines.

Chair Brower:
We will take neutral testimony now, please.

Kathleen Conaboy (Nevada Museum of Art, Inc.):
I am a board member of the Nevada Museum of Art. As I said in my correspondence with Committee members, we propose an amendment (Exhibit D).

Nevada is becoming internationally known as a destination for experiencing fine art. Its historic reputation as the birthplace of significant land art is being rejuvenated as the Museum plans a major sculptural installation by an internationally renowned sculptor in the desert near Las Vegas.

The public art project we refer to is a huge installation called Seven Magic Mountains by Swiss artist Ugo Rondinone. It will be comprised of seven 25-foot-high towers of painted stone and installed adjacent to Interstate 15. It represents a significant work of art.

This type of public art can have a positive economic impact on the State as it draws significant visitors from the international community. In an effort to assist the Museum plan for and execute this important display, attorneys have worked pro bono to help the Museum position itself appropriately. These attorneys have recommended that a potential obstacle to the display of public art is the possible liability for personal injury to persons who use the artwork in an unintended manner.

Persons using the artwork in an unintended manner may be climbing on sculptures or attempting to tag or otherwise deface the artwork. By its nature, the artwork is intended to be displayed in areas that are open to the public and have minimal security, increasing the opportunities for the misuse of the works.

Our language in the proposed amendment intends to shield persons associated with the display area from liability that may occur with persons essentially misusing or failing to heed the warning regarding the art.

We want to extend the protection of the landowners to those who create, sponsor, own or produce such artworks. We want to add to the bill those who create the art, the artist's sponsors or those who own or produce the art, such as the Nevada Museum of Art or our partner, the Art Production Fund. We do not believe that fine art, as defined in our proposed amendment, is necessarily anticipated in the recreational use statutes. Our proposed amendment is drafted to dispel that ambiguity.

The Legislature has already defined fine art in *Nevada Revised Statute* (NRS) 361.068, and we duplicate that language in our proposed amendment. In addition, we have duplicated the purchase or appraised value clause in that same part of the statute and the requests for limits on protections for those

entities that exhibit such art. Providing protections from liability for persons who create or produce public art and to the owners of the premises where this art is displayed will enhance opportunities for the State to host significant public art exhibitions. It will showcase Nevada's leadership in the international art community.

Senator Segerblom:
Is there no liability at all?

Ms. Conaboy:
Under statute, no liability exists with appropriate precautions, such as signage.

Senator Segerblom:
The unintended consequences of this art installation concern me.

Chair Brower:
Ms. Conaboy and I have discussed the proposed amendment, and I suggest the Committee take a deeper look at it. I do not know that the proponent of the bill has seen the amendment or if anyone in opposition to the bill has seen it yet. I expressed to Ms. Conaboy that the Committee would look at it in due course to decide if it has a place in S.B. 160.

I will take testimony in opposition to S.B. 160.

Robert Eglet (Nevada Justice Association):
I met with Senator Roberson earlier to discuss some of our concerns about S.B. 160. I also met with other Senators on the Committee. I did not mean to cause animosity within the Committee with my discussions. I appreciate that Senator Roberson indicated he is willing to work on the bill language.

Senate Bill 160 is something we can get behind; however, our concern is the definition of trespassing. The definition of trespasser under NRS 207.200 gets unclear where it states "any person who, under circumstances not amounting to a burglary goes upon the land or into any building of another with intent to vex or annoy ... ." That is a vague statement.

Some people may think that Girl Scouts selling cookies, Mormon missionaries knocking on their doors or even politicians canvassing their district are vexing or annoying. It would be better if we could add a sentence to the bill clarifying

trespassing. The language needs to express that trespassing is when someone enters a property with the intent—or develops the intent after having entered the property—to do harm to the property owner or the property itself.

I disagree with the comments that a Girl Scout selling cookies, a religious missionary or a politician falls under the definition of a licensee. A licensee is someone who enters onto the property of a business where the public is generally invited, but not a home.

With respect to a child, someone mentioned an exception, but in the bill as written, the child exception states if there is an "artificial condition." What if a Girl Scout knocks on the door and the owner answers the door, but the owner has a dog and the dog attacks and bites the Girl Scout? As S.B. 160 is written, the Girl Scout is a trespasser when she enters the property, she is not a licensee—there is some vagueness.

If we could better define trespasser, we would support this bill. We agree that if someone comes onto someone's property to do harm to that person or to the property, he or she is termed a trespasser. The trial lawyers will support that type of definition.

Bill Bradley (Nevada Justice Association):
I would like to share basics about the two cases that brought us to this position. In *Moody's*, an off-duty police officer observed a violator. In an effort to pursue the violator, the police officer took his motorcycle onto the property of a business to turn it around and, in the process, hit a suspended wire. Was the police officer a trespasser? Or was he an implied licensee in carrying out his duties?

I have never heard of the term "implied licensee," by the way. A licensee is the power man who comes to read your meter because the power company has an easement to come onto your property to read the meter. A licensee has a lease or a legal right.

The Nevada Supreme Court, which is not arbitrary, capricious or unreasonable, decided to do away with this distinction in order to look at the cases, weigh totality of the circumstances and determine reasonableness. No one today has said those words—"under the circumstances."

When you have a flagrant trespasser, as the man from McDonald's testified, there is no right to bring an action. Rather than pigeonhole these other classifications into legal definitions, the better policy would be to evaluate the facts under the circumstances. Let us not forget that Nevada already has an absolute immunity for recreational use. We also have NRS 7 that holds lawyers accountable for filing, defending or maintaining an action in a frivolous manner.

I think the Court wants to look at these issues under the totality of the circumstances rather than pigeonhole these terms. The Court wants to know: Was it a group of young religious fellows who wanted to share their beliefs with us? Was it the politician who was getting out the vote?

Nevada has come a long way in passing reasonable laws and the Court did not make this decision in a vacuum. The Court was following the Restatement (Third) of Torts: what was reasonable under the circumstances? We need to trust our judges; they are the gatekeepers to these decisions.

Chair Brower:
Mr. Eglet, you reminded the Committee of the definition of trespasser from NRS 207.200, but remember, the word trespasser is defined in that statute as one whose purpose is to enter the property to vex or annoy. No one could reasonably say that a Girl Scout, missionary or candidate for office who enters the property is trespassing for the purpose of vexing or annoying. That may be the subjective impact on the listener or the person who answers the door, but that is not purpose.

Mr. Bradley:
I find it is always extraordinarily difficult to prove specific intent of an individual actor. That is why there is general intent rather than specific intent. I do not think the definition of criminal trespasser was meant to apply to this bill. This is what worries me about S.B. 160. I hope we do not turn this issue into a criminal standard.

Chair Brower:
No, that is not the bill's intent. Your points are well-taken and the Committee will consider them.

Mr. Bradley:
I thank Senator Roberson for listening to and addressing our concerns.

I do not understand the argument from the Nevada Museum of Art. Does the public have to pay to access the art installations? There is certainly a difference of responsibility when you pay for the privilege of visiting something versus something being there for your enjoyment.

Chair Brower:
I have read the Museum's proposed amendment. Whether it is rocks stacked up in the desert or displays in the courtyard of the Museum, the Museum contends that people in such areas are not trespassers, because they may be on their way into the museum to view a show or an event. If patrons climb on the art installations, the Museum seeks some statutory immunity from liability in that event.

Mr. Eglet:
The word "trespass" for purposes of S.B. 160 needs to be clearly defined to address our concern about unintended consequences. We have concern about someone being given immunity when that person really should have assumed some liability.

Someone is truly a trespasser if that person goes onto the property with the intent to do harm to the occupant or owner of the property or to do harm to the property itself. They are also trespassing if, once they get on to the property, they refuse to leave after being asked.

Chair Brower:
A hypothetical situation is someone dropping off a flyer at my doorstep for a service. That person has come onto my property and is trespassing. That person drops off the flyer on my doorstep and then trips on the way off my property. That person sues me. Should I not be immune to liability?

Mr. Bradley:
It depends on the circumstances. Had anyone tripped before? Had you had problems with it? Had you ...

Chair Brower:
The bill is intended to address that problem. Proponents of S.B. 160 would say that landowners should not have to defend every lawsuit brought about by that sort of scenario and make those arguments to a jury.

Mr. Bradley:
I understand that. We go through and eliminate this class of individuals who can come into court and exercise their Seventh Amendment right. If it is such a significant issue, we would invite the insurance industry to come in with a reduction in homeowners' premiums.

Chair Brower:
That is another issue entirely. Let me turn it around and question you, Mr. Bradley. What hypothetical situation would make the Committee quickly say, "This bill is not what we want"?

Pose to me a hypothetical situation not covered in the bill when the trespasser is injured and absolutely should have the right to sue. Pose to me a situation with no malicious act by a landowner who exercises reasonable harm after discovering the trespasser's presence.

Mr. Bradley:
I will use your example about the person dropping off a service flyer on your doorstep. That person who came to your house to drop off the flyer was attacked by your pit bull. Three weeks earlier, your pit bull had attacked somebody else on the front sidewalk. The front sidewalk is a disputable area between what constitutes your sidewalk and the city's sidewalk. If you have a known dangerous condition on your property …

Chair Brower:
Is the pit bull an artificial condition?

Mr. Bradley:
I do not understand what an artificial condition is.

Chair Brower:
If a pit bull is an artificial condition, it is covered by S.B. 160.

Mr. Bradley:
You may be confusing attractive nuisance with trespasser.

Chair Brower:
Nobody came on to my property because of the dangerous pit bull. It is not an attractive nuisance situation.

Mr. Bradley:
We will eliminate the attractive nuisance doctrine from this discussion.

The situation is: A person comes to drop off a flyer and you have a dangerous condition from which someone previously suffered an injury. Under that scenario—particularly with an aggressive dog, which leads to most cases we see in this realm involving out-of-control vicious dogs—if a problem exists that you are aware of and it contributes to another person's injury, I would submit to you there is liability.

If three separate incidents happen with people climbing to the top of an art installation and falling off, then something is going on to attract people that has to be identified. Maybe there needs to be a simple sign that states, "Do not climb on the art." Also, what about the "No solicitation" sign? If you go past that sign, are you a trespasser? I think you are.

Senator Ford:
The Girl Scout and Mormon missionary examples are not covered in this bill. Senator Roberson, are you attempting to bring back the licensee issue? All I see in this bill is trespasser liability as opposed to invitee liability. Is this a bifurcated situation in which you are either an invitee or a trespasser? If that is the case, then S.B. 160 is even more problematic.

I am delighted that we aim to fix this problem, and I understand where you intend to go with this bill, Senator Roberson, but the bill's language leaves open possibilities where folks are getting hurt, yet do not have recourse. That is not fair.

Senator Roberson:
What was your question with the licensee issue?

Senator Ford:
This bill seems to revert to pre-1994, before the Nevada Supreme Court got rid of the tripartite consideration of licensee, trespasser and invitee. This bill does not state the standard of duty or standard of care owed to the licensee. This bill only talks about the standard of care for the trespasser.

If this goes to court and someone argues licensee, would the courts then say, "Well, the Legislature amended the statute and purposely left out licensee, so

licensees do not exist anymore. You are either an invitee or a trespasser. Since the property owners did not invite you, you are a trespasser." There is ambiguity.

Senator Roberson:
I am happy to work out any ambiguities. The Legislative Counsel's Digest clearly says, "This bill adopts the principle for determining the duty of care owed by an owner, lessee or occupant of any premises to a trespasser as it was at common law."

Senator Ford:
The bill mentioned a trespasser but not a licensee. Before 1994, the law was a tripartite consideration. Post-1994, the law is unitary duty if a landowner reasonably maintains his or her property. If we pass S.B. 160, do we return to the tripartite consideration or to a bifurcated situation, where we have to consider whether the person was an invitee or a trespasser?

Chair Brower:
That is a fair question to ask, but not one that we can answer here today. Getting back to the bill, I understand S.B. 160 to simply say an owner does not owe a duty to someone illegally on his or her property, except in a couple of defined circumstances.

Mr. Bradley:
I agree with your statement; however, we are left with the question of what "illegally" means.

Chair Brower:
Illegally means trespasser—no lawful right to be on the property. We will not resolve this issue today, but the Committee appreciates your arguments.

Senator Roberson:
In a conversation with Mr. Eglet earlier today, I suggested that the Nevada Justice Association bring forth a proposed amendment which addresses the definition of trespasser. I am willing to consider such a proposal and believe the Committee will consider such an amendment as well. I would like to obtain consensus on this bill.

Chair Brower:
Seeing no more business or public comment, I adjourn the meeting at 2:19 p.m.

RESPECTFULLY SUBMITTED:

_____
Cassandra Grieve,
Committee Secretary

APPROVED BY:

_____
Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
S.B. 160	C	3	Chris Appel	Statement
S.B. 160	D	2	Nevada Museum of Art, Inc.	Proposed Amendment