

**TECHNOLOGICAL CRIME ADVISORY BOARD**  
**Technical Privacy Subcommittee**

**MINUTES OF THE MEETING**

**December 6, 2013 at 1:30 PM**

Via Teleconference with Public Access Located at:  
Office of the Attorney General  
100 N. Carson Street, Carson City NV 89701

**AGENDA**

1. **Call to Order and Roll Call.** Subcommittee Chair Hal Berghel called the meeting to order and established that a quorum was present.

**Present:** Hal Berghel, Chair; Stephen Bates; Dennis Cobb; James Earl; James Elste; Allen Lichtenstein; Ira Victor.

**Absent:** None

**Staff Members Present:**

Brett Kandt, Special Deputy Attorney General and Executive Director, Technological Crime Advisory Board.

**Others Present:** None

2. **Public Comment.** The Chair asked if there were any public comments from Carson City or Las Vegas. Hearing none, the next item on the agenda was called.

3. **Chair's Welcome.**

Hal Berghel:

By way of background, I proposed this idea to the Attorney General and the Tech Crime Advisory Board because of my observations that current laws do not adequately protect individual privacy. I thought that we together might be able to do something constructive for the State. So the primary question that I would like to address is: to what extent would it be both desirable and possible for the State to add statutes to protect individual privacy? With that in mind, I'd like to see most of our work on this subcommittee done in subgroups, and toward that end, I am going to make suggestions from time to time on how we might so organize ourselves. Every meeting, I'd like to give every member an opportunity to make a five minute presentation on privacy issues of interest to them that we haven't discussed yet. The next step is to ask ourselves how we might go about coming up with legislation that could help us. I would like to ask Jim Elste if he would be willing to coordinate the

excellent attorneys that we have on this subcommittee when we get to the point where we are drafting some legislation for consideration by the Attorney General and the Tech Crime Advisory Board.

Jim Elste:

Hal, as a point of order, could we do Agenda Item 4, Subcommittee Introductions, I would love to hear from the different subcommittee members, their backgrounds, to get a perspective on what they are coming from.

Hal Berghel:

That's the next item. We'll go to the Subcommittee Introductions, please provide an explanation of how you are involved in privacy issues, privacy litigation and privacy advocacy.

4. **Subcommittee Member Introductions. (Subcommittee Members)**

**Hal Berghel** – I'm Chair. I've been working in the digital privacy and security business for a while now and I teach the courses in that area at UNLV.

**Stephen Bates** – I also teach at UNLV in the School of Journalism. I'm a law school graduate and have taught a course at graduate school on privacy.

**Dennis Cobb** – I am a retired Las Vegas Metropolitan Police Department Deputy Chief. My background in this area was that I was CIO for LVMPD and had been a fraud investigator for part of my time there. I've always been fascinated by kind of balance you have to have between respecting privacy and protecting people by being able to get into information when you need it.

**James Earl** – I am presently Cyber Counsel, Strategic Policy Person for the State of Nevada Enterprise IT Services and prior to doing that, I was the Executive Director of the Tech Crime Advisory Board. Prior to that, I've held a number of jobs in the US Government including being the State Department Telecommunications attorney for a number of years. No specific background in privacy issues.

**James R. Elste** – I am currently the CEO and founder of a company called Cognitive Extension, Inc., and working on a solution that helps with collaborative decision making. However, my professional background has been primarily as a cybersecurity and privacy professional working in various capacities doing consulting for organizations like Ernst & Young, IBM Global Services. I'm the former Chief Information Security Officer for the State of Nevada, former Director of Information Security for IGT, and the former Director of Security Strategy and Programs for Symantec. Currently, I am serving as the Alternate Member Representative for the State of Nevada on the National Strategy for Trusted Identities in Cyberspace (NSTIC) Identity Ecosystem Steering Group (IDESG), where I serve as the Chair of the

Privacy Committee. The NSTIC-IDESG is charged with developing the Identity Ecosystem Framework to move towards a trustworthy credentialing model for digital identity. In the capacity of the Privacy Committee Chair, I work with our privacy committee members to insure that privacy is incorporated into the output of the NSTIC-IDESG. It's a pleasure to be part of this group and see privacy being raised in visibility both in terms of the Tech Crime Advisory Board and the state as whole.

**Allen Lichtenstein** – I am the General Counsel for the ACLU of Nevada. Prior to that I taught communications courses, so I dealt with privacy in the academic realm, and also as a lawyer for both the ACLU as well as in private practice with a variety of privacy issues both technical and non-technical.

**Ira Victor** – I am a Digital Forensic Examiner with Data Clone Labs, with a specialty in compliance. I am also President of InfraGard Nevada - Sierra Nevada Members Alliance, an information sharing program between the FBI and the private business sector to protect critical infrastructure.

5. **Discussion on Initial Strategic Topics for Consideration.** (Discussion Only)

Hal:

I have collected these topics from you so to the extent you've contributed to them, there should be nothing here that's terribly surprising.

**A. Discussion of latitude of states to expand constitutional privacy protections to citizens.**

Hal Berghel:

We know that the Feds aren't doing an awful lot at the moment. We know that some states like California are fairly aggressive at this. Where can Nevada fit? I'll turn this over to one of our attorneys on the subcommittee.

Allen Lichtenstein:

I was looking at this, it may be a bit of a pipe dream to that a state constitutional amendment be proposed that would guarantee the right of privacy. We don't really have a clear directive from the state government in terms of a constitutional right of privacy for individuals. Maybe the first step would be instead of looking at piecemeal kinds of things, we get an overall umbrella that may take a while to get but would establish in Nevada a constitutional right to privacy.

Hal Berghel:

Jim Earl, you have experience in reading statutes and writing them, as have you, Brett, as well as working with the legislature. Is something that big and overarching possible in Nevada?

Brett Kandt:

Certainly, anything is possible. The constitution has been amended in a variety of ways. It's obviously a long process and there are certain points along the way where it can fail. It's got to go to the citizens and obviously, it's a completely different process than it is than just proposing amendments to the Nevada Revised Statutes. We are talking about two different processes there.

Jim Earl:

In terms of general political acceptance and ability to achieve some legislative focus, I have been surprised a little bit in terms of the impact, whether direct or indirect, that many of the Snowden NSA revelations have had. In the past, and I defer to a couple of other people, they may have different observations, the legislative focus on these issues has been kind of diffused. Although it comes into focus if there's been any attempt at modification at some of the Nevada statutes that are either parallel to or would seem to follow on from some of the Patriot Act statutes. There have been a couple of those that have been proposed, either as stand-alone legislation or modifications over the last 6 years. I think that the NSA revelations have been so broadly publicized for such a significant period of time and have resulted in such significant secondary and tertiary responses, -- for example, there's a group in Utah that has hit the popular press in the last week or so about trying to shut down the new start-up data center that NSA is due to come online very shortly by closing off its access to public utilities. I think that the general consciousness of online privacy issues, particularly where you have Google and Microsoft and others making statements that they have within the last couple of months regarding NSA, that the level of political awareness, even among Nevada legislators is sufficiently high so that there would be, at least, a willingness to listen to some well-formulated proposals in a way there wouldn't have been much stomach for in the preceding years.

Brett Kandt:

Just to be clear about the process we are talking about, any legislative proposal to amend the Nevada Constitution requires passage in two consecutive sessions and then a vote by the public. So, it's a process that takes about three to four years.

Ira Victor:

Isn't there another means by public vote twice?

Brett Kandt:

You can do it by ballot initiative but that requires a certain number of signatures to just get it on the ballot. I think we were talking about the process through the legislature.

Ira Victor:

Brett's point is well taken in terms of the difficulty of a constitutional amendment. That's certainly one approach. There may be some other approaches that are simply statutory.

Allen Lichtenstein:

The process of two legislative sessions and vote of the public is the standard. There is, of course, the ballot initiative process which has its own kind of issues. In my particular view, and I think this was reflected in other comments by someone else, this would be a good time to strike while the iron is hot to use a cliché. The question of privacy seems to unite various sides of the political spectrum. We've worked very well on privacy issues with folks that most people would think we would never be on the same side with. My suggestion is to begin what would be a somewhat tedious process but my guess would be at this particular point, both within the legislature as well as the electorate, because of the NSA regulations and because of the increased surveillance and the like that there would be an appetite for at least an overarching umbrella acknowledging a right of privacy under which more specific kinds of battles could be undertaken. Politically, that might be the case.

Jim Elste:

First, Allen, I applaud your swinging for the fences with proposing a constitutional amendment in our inaugural meeting. I think we would all like to see something like that, although I think the discussion kind of highlighted a much more difficult process and one that has a significant amount of time and effort to be successful. I think Jim Earl highlighted the opportunity that we have, vis-à-vis, capitalizing on the heightened awareness of privacy and in many respects building out some legislative wins that are a little more achievable. I would like to go on the record of being an advocate for us looking at where we can have effective legislation at a state level that advances privacy as a fundamental principle in a way that's politically feasible.

I'll give you at least one example of what I'm talking about which is in the last session. There was a bill to prohibit employers from asking individuals or demanding as a condition of employment access to social media credentials. That is not a grand privacy accomplishment but it is a significant privacy accomplishment when you understand the implications of what that particular

practice creates. That type of legislation helps us advance the privacy cause and gives us instances of where we can be successful in advancing privacy legislation and then the last thing I would highlight is building out a strategic framework of legislation that's going to ultimately, raise the bar on privacy in Nevada. Where we see in a lot of other states, initiatives around particular pieces of legislation, there doesn't seem to be a lot of cohesion or coordination between those pieces of legislation. You can take, for instance, California Senate Bill 1386, which established notification requirements for security breaches of personal identifiable information. That served as a benchmark for all the rest of the states to establish similar legislation. We need to be able to start doing that and harmonizing these particular pieces of state statutes in a way that achieves the interest of establishing the constitutional protection for privacy through a series of coordinated state legislation. I would advocate very strongly for us coming up with a framework or strategy that covers a number of different elements of privacy and how we might approach that statutorily. Finally, to answer the question posed in the agenda, I think the answer is a resounding yes and there was an article published a couple of weeks ago that suggested that the states have to step in where the federal government is failing to act. The states certainly have the authority to establish their own statutory structures that allow us to improve privacy and I think in Nevada we would find, if we can agree that there is a reset for civil liberties in Nevada and interest in trying to reinforce that, the support for this type of legislative agenda. I think that really is the mandate we have is to come up with that strategy, come up with that legislative agenda, make those recommendations, and raise the privacy bar through a strategic approach to privacy legislation.

Hal Berghel:

Are you talking about the October 30<sup>th</sup> New York Times article?

Jim Elste

I believe that's correct. I think that California's privacy legislation to date would serve as a very good reference point for us. We don't, certainly, want to be in a position of just following California's lead. I, personally, would like to see Nevada in a leading role in this case. There are some lessons to be learned from what California has attempted from privacy legislation prospective.

Hal Berghel:

Exactly, thank you. California Senate Bill 1386 has been passed, is that correct?

Jim Elste:

Yes.

Hal Berghel:

So we've got two discussion topics that don't necessarily have to be mutually exclusive. One is to consider is a constitutional amendment and the second is a more piecemeal approach where we have lower hanging fruit and a higher success rate. Allen, do you have exemplars of constitutional amendments that we could consider? Are there proposals coming from other states that we could look at and take this up again next time?

Allen Lichtenstein:

I haven't collected them but I certainly can and add them. I believe ACLU has some material also that I put together. I just wanted to say that I wasn't suggesting the constitutional amendment would be an exclusive kind of item. It is a long process. I think it probably would be a successful one, politically popular but I certainly wouldn't want to put all our eggs in that particular basket but I don't think we lose anything by trying to test the waters on that while doing other things. I will gather what I can.

Jim Elste:

I concur with what Allen just said and understood that that was not an exclusive approach but one that put it on the table and Allen, I totally agree.

Hal Berghel:

Ok, that's something for us to do. If I understand you correctly, Jim, your suggestion is that we proceed through some of the other discussion topics and find which of these we might want to target first. Is that correct?

Jim Elste:

I think that's it in part. I think these are pieces of the puzzle, if you will. I think that the other part of this is defining a framework that identifies the privacy issues we are trying to address that may or may not already have statutes written regarding those issues. I'll go back to the social media example for a minute. There really wasn't a statute in place that addressed using credentials for social media in that way. Ostensibly, it was a brand new piece of legislation so I think this is where you have to align some sort of strategic agenda, if you will, that identifies the issues we are trying to address with specific statutes that exist and need to be amended or new statutory language which needs to be defined. I think the combination of the two gives us the endgame of recommending to the Tech Crime Advisory Board the types of legislation to consider pursuing.

Hal Berghel:

Do you have such a strategic objective in mind?

Jim Elste:

I'd be happy to work with members of the subcommittee to try and draft something and identify that sort of privacy issues landscape and then we can try to map that landscape to existing statutes and see which ones have the greatest benefit, which ones we think are feasible, which ones we think are infeasible, and then from that we can refine and otherwise start to agree on what that framework looks like so I would be happy to work with the subcommittee members to try and craft at least the strong end for that.

Ira Victor:

Mr. Elste, I would be happy to work with you on that project.

Stephen Bates:

I wondered if we could also get links to the current privacy statutes in the Nevada Code. That would be helpful for me.

Jim Elste:

Stephen, an interesting phrasing because privacy statutes probably in and of themselves are few and far between. Statutes that have implications from a privacy perspective are probably a little more appropriate phrasing. That's what I think the challenge is – where are those statutes that impact privacy that aren't under some sort of singular privacy statute.

Hal Berghel:

How would we achieve that? Who is in the best position to provide us with links to statutes with privacy implications?

Jim Elste:

The NRS is published and we have what is reasonably fluid access to it although I'll highlight that recently the website for NRS is starting to post a little copyright notice. That might be a question for future consideration is to what exactly you do when it comes to copyrighting the NRS which ostensibly be a public record. We can look through if we have a framework of privacy issues look through the statutes to find relevant statutes to at least begin the process. So then those of you who are attorneys are well aware that the statutes have references to other pieces of law. There is a lot of inter-relationship between the statutory language so it may take time but eventually we can get a fairly good composite of what statutes are relevant. That's my non-lawyer opinion on it.

Hal Berghel:

Do we have a volunteer who would be willing to make a first cut at that? Let's revisit this and I sense and unless I'm missing something that this would fall into the category of an enormous undertaking and as a result, something not to engage in lightly. Is that the sense of the committee?



Allen Lichtenstein:

I can't, at this particular moment, commit resources from the ACLU but if we have some intern, we might be able to get some manpower to do some work on that project. Again, I can suggest that I can see where in terms of using legal interns and I will do so but I can't at this moment make a commitment, I can only make a commitment to pursue it.

Hal Berghel:

OK, so we will hold over to the next meeting as to whether we can get some intern to help us identify the statutes in the Nevada books that have privacy implications and revisit that again next time.

Jim Earl:

While we are doing a sort of search of underlying source material, and I applaud Allen's willingness, if an intern becomes available, to do that and I also noted of interest, his willingness to undertake some discussions with national ACLU, one of the questions that I have for everyone here, essentially is whether anybody has any existing policy contacts at EFF, the Electronic Frontier Foundation. My last discussion with any of those staffers was probably two or three years ago and at the time, EFF was not particularly focused on policy issues. That was very clear when I asked them if they were interested in helping us consider additional statutes for Nevada. I suspect that that has changed just because of some of the EFF announcements that I've seen. Jim Elste, for example, have you run across EFF staffers in your work with IDSG?

Jim Elste:

Absolutely, I work with both Lee Tien who is a senior staff attorney for EFF, and Jay Stanley who a senior policy analyst for the ACLU's Speech, Privacy and Technology Project. Both of them have been very helpful in my previous efforts. We had an interesting legislative foray last session on protecting depositors of data. EFF was able to put us in contact with their attorney who was representing the non-infringing individual whose data was confiscated during the mega uploads confiscation exercise. It was very helpful and I've got a good relationship with Lee and I'd be happy to reach out to him to see if we can get some assistance from EFF. I think we might want to as a subcommittee identify the other NGO's or privacy advocates the organizations you want to get in contact with. As a brief aside, I think we would find a lot of these organizations have a strong interest in providing support for an effort like we have on this privacy subcommittee. I think there's a vested interest for us to try and identify those organizations and get in contact with them and garner that support.

Hal Berghel:

As a starting point, we will at least make contact with EFF and move to other NGO's as possible.

Jim Earl:

One of the things we should at least consider if we are taking advantage of an ad-hoc approach, if that is one of the alternative paths that we want to pursue, whether it makes sense to provide support for the re-introduction of the legislation that Jim Elste referred to just a moment ago. I don't think it made it out of committee because of some of the behind the scenes concerns by major data holsters in Nevada. That crowd has changed a little bit in the last year or two – I've gotten a heads up that there are a number new start-up data centers in Nevada that were not operational at the time of the last legislative session or even 9 months ago. One of the issues I think that we should address at some point, as part of an ad-hoc approach where we tick off subject areas that have some privacy implications whether it's worth a look at reintroducing the type of statute that was introduced in the last legislative session to protect data depositors in a mega upload situation.

Brett Kandt:

Jim, do you know what that bill number was?

Jim Earl:

I don't off the top of my head but I think Jim Elste does.

Jim Elste:

AB 385.

**6. Discussion on Initial Tactical Topics for Consideration. (Discussion Only)**

Hal Berghel:

Given the amount of time we taking, these are the trigger points that I've added from discussion that we've had individually. There is no reason we have to stick to all of them. I would encourage each of you to look ahead at Items 5 and 6 since we only have 20 minutes left in our meeting and see if there are some that you want to address now. If so, feel free to chime in and bring it up.

Dennis Cobb:

It's rather tactical, I was thinking under agenda item 6 is where I would bring it up as an opportunity that might exist to bring people on to the same side of this issue much like Allen mentioned earlier. At the Homeland Security Commission this week, there was a discussion about having a closed meeting

which is authorized under state law because of confidential information but in conversations afterward with people, there is no taxonomy of information in the State of Nevada that have tiers of how things are supposed to be handled, stored, disposed of, of any of that kind of even their own information. There would be a corresponding difficulty for them for information that is private for a citizen if it's going to be shared in some way, whether it is the healthcare website or an investigative purpose, there is no current taxonomy that allows some sort of investigation after the fact to see if things were done properly or not. There might be a chance for us to get the security-minded people that are often on the other side of this issue in line with us to help frame the discussion of what is private and how it should be handled.

Hal Berghel:

Would you be willing to come up with something a little more specific for next meeting?

Dennis Cobb:

Sure. I can sketch up a basic framework. Essentially the federal government uses four tiers for their information. I'd never use the same terms they use because they are politically charged but something simple that at least allows a discussion of what someone's responsibilities are when they are in possession of this information would be a starting point for both privacy and government security kind of discussion.

Hal Berghel:

A 'Framework for Information Responsibility and Handling' for the State of Nevada.

Jim Earl:

Looking through some of the items that are listed in Agenda Item 6, particularly B, C, D, E, and F, and some of those in order to be truly effective obviously would have to be encompassed in federal legislation which is not to say we couldn't start the ball rolling at the state level. Let me add something to a list of options which is a little bit outside of the box. We talked a little bit about constitutional amendments, a little bit about legislation, either targeted to write a policy right of privacy or having some adjunct relationship to privacy rights. There may be yet an additional legislative option which will sound a little strange but I think we should consider none the less, that is instead of going to the legislature to ask for legislation, simply to request a joint resolution that would call on the Nevada congressional delegation to consider certain topics for inclusion in federal statutes. I'm not sure when that was last done but the scope of different types of resolutions is actually pretty broad. If we want to consider something on a broad level as some of the Items in B, C, D, E, and F, would be that's at least a vehicle we might want to consider. The upside is that although it wouldn't affect either state or federal law directly, it

may be easier for state legislators to sign on to a joint resolution and it certainly is something for very low cost to them, lifts the entire debate potentially, if we can get them to sign on to joint resolution text which would pick up some of the national interest and national press interest.

Hal Berghel:

I'm new to joint resolutions but is this a "capture the consensus" approach where the legislature signs off on text that gives fabric to privacy concerns. Is that correct?

Jim Earl:

That's essentially right.

Hal Berghel:

Legally, that has no bearing but if I understand you correctly what you are saying is politicians would do well to pay heed to the sense of the Nevada Legislature.

Jim Earl:

Essentially, this is one of the ways that the Nevada Legislature can formally call on its congressional delegation to consider certain topics for federal legislation. It simply is a technique and it's a propaganda technique to be quite frank about it. It would, conceivably, be useful or at something we shouldn't reject out of hand. It would raise the level of awareness of something if we were able to get the Nevada Legislature to pass something requesting US congressional representatives from Nevada to consider certain topics for possible legislation at the federal level.

Hal Berghel:

Is this something that would be appropriate for Allen's idea of steering towards the constitutional amendment at some point? Could we put that kind of wording in a joint resolution?

Jim Earl:

There's no reason to have a single approach. Potentially, there are more tools in the toolbox than we might think at first blush. I will just throw this out as a brain storming idea that may or may not see the light of day after discussion with some legislators. Also, is this joint resolution idea something that we should direct to the Attorney General before we get too far down the road?

Hal Berghel:

I think so and Brett may have a pretty good feel for it as well in terms of the different types of resolutions which are intended for slightly different purposes and that's how the legislature sees them. This would be something relatively

new but let's be a little imaginative and creative. Both the Attorney General and Brett will likely have more background than I do.

Brett Kandt:

Quite often, there are pieces of legislation that have originated from the Tech Crime Advisory Board that were carried by legislators themselves. In other instances, there have been other pieces of legislation that were included as part of the Attorney General's legislative package. If it is a proposed joint resolution that would definitely have to originate from the legislators. It could certainly be broached with the two legislators that sit on the Tech Crime Advisory Board.

Hal Berghel:

Any other members' comments on Items 5 and 6?

Stephen Bates:

I can do something on the news media shield and work with them and send something around, a memo explaining what the issue is and suggestions.

Hal Berghel:

Could you give us a very brief statement of the issues now because not all of us are in this loop?

Stephen Bates:

Nevada has a strong news shield law protecting reporters from having to testify about among other things, confidential sources, but it has a few loopholes in it and new technology have widened the loopholes. A few changes might be able to address that.

Allen Lichtenstein:

Just to let people know, very recently the Nevada Supreme Court came down with a good decision on the scope of the news shield privilege under NRS 49.275. It is *Aspen Fin. Servs. v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. No. 93 (November 27, 2013), and so we should probably report on the implications of that also.

Stephen Bates:

The Court closed one loophole but a few remain.

Allen Lichtenstein:

The Court gave an indication that it takes that shield law quite seriously.

Hal Berghel:

If we could just get that into federal legislation we would be better off. Steve and Allan will report next time of possible improvements in the news shield privilege statute.

Jim Elste:

Having committed myself to trying to get a framework pulled together, I will try to align anything that I do with the items that are on this agenda and we can start fold the different pieces together.

Hal Berghel:

I would like to see some of us work at the application level. For example, to consider statutes that might prohibit SSL services by ISPs, or installation of spyware without court orders, or the sale of anti-virus or security software that possesses undisclosed limitations, backdoors or malware, without written disclosure to the end user.

Anyone we haven't heard from?

Ira Victor:

I do have some concern because we just got the biennium issue and if we get too specific about the process then the technology leap could make for one step forward and two steps back problem. Unless and to the extent that we are getting specific, that we follow the model in NRS Chapter 603A that levels of secure connection would need to be in alignment with then current standards rather than being explicit and locking in technology.

Jim Elste:

I wanted to take a stand from a business person's perspective which is the examples of the ISG's lowering security below advertised levels or otherwise hobbling security control. It seems to me that we are treating the symptom not the problem. As a business person, they are probably not doing that for legitimate business reasons. They are being forced or otherwise encouraged to do that for other reasons which are at the heart of the problem. I would counsel that we look at two things: one is be careful that we are not treating the problem but treating the symptom; two, is to try and think of ways to approach resolving a problem that is manifest in that manner with broader forms of legislation that establish practices they cannot easily work around. If you tell them that they are going to be required to provide a certain level of protection for personally identifiable information then that protection must be at this level, it's a little harder for them to create ways around that. I would counsel in favor of thinking broadly how statutory language could be written that addresses the problems, not the symptoms, and creates constructs that really enforce good privacy and security practices without giving them alternatives that might otherwise allow them to subvert the intent of that statute. I think they are good issues to highlight and they are going to produce

very interesting discussions in this group about how we address and identify that root cause and what we do about it.

Hal Berghel:

Where I was headed with that is that they would be required to disclose when they did things. Tech firms are going to do what they want to do or what the feds ask them to do. That wasn't my interest – my interest was a statute that would require them to tell the user that they did it or are about to do it. Something along those lines.

Hal Berghel:

What do the rest of you think? Any other comments about Items 5 and 6?

7. **Committee comments.**

Jim Elste:

I would really like the record to reflect my compliments and commendations to Hal for getting this subcommittee set up. I think it's an outstanding accomplishment and you drove this with the Attorney General and the Tech Crime Advisory Board and I know it was a lot of hard work and we've had our inaugural meeting and I think you deserve kudos for that. Please note this on the record for me. I appreciate it.

Allen Lichtenstein:

I would suggest that members of the board join in that comment and make that unanimous.

8. **Discussion and possible action on time and location of next meeting.**

Hal Berghel:

Is it possible to have some of our meetings in person?

Brett Kandt:

I was going to say one item you may want to consider is whether you think you can conduct your business adequately by teleconference. If you would prefer to do what the Tech Crime Advisory Board does – they hold meetings that are video conferenced north and south between the Legislature in Carson City and the Grant Sawyer Building in Las Vegas or if you wanted to meet in some other venue or format. That's something I was going to raise with the group what would work best for you and what is most conducive to your efforts.

Hal Berghel:

What do you think?

Dennis:

If it were possible to meet in person perhaps once a year, I don't know that we'd have to meet in person every time but I do think there are some felicitous byproducts.

Jim Earl:

Sure, I'm fine with that. It may or may not be a problem with scheduling those legislative facilities because there are not legislators that are members of the subcommittee. Not sure how the LCB management is on that but that might be a problem.

Hal Berghel:

Brett, is that a problem?

Brett Kandt:

Thank you so much for raising that as an issue. I hadn't thought about that but I can check. There's another option as well. If you would like to video conference north and south, the Attorney General's Office has video conferencing between our Carson City and Las Vegas offices so to some extent, if you want to video conference, you can do it. Those in Carson City go to the Legislature and/or those in Carson City go to the Attorney General's office which is right across the street from the Legislature. In either instance, those folks that are in Las Vegas still have to go to the Grant Sawyer Building; they just go to the Attorney General's office as opposed to the Legislature's offices in the Grant Sawyer Building. Either way, if you want to do video conferencing, we can make it happen.

Hal Berghel:

Allen?

Allen Lichtenstein:

I'm fine with either proposal or meeting in person, video conferencing or some combination thereof.

Jim Elste:

I would like to opine on meeting space. The thing that I would say is meetings with the facilities in Carson and Grant Sawyer would be great. I think it would be nice to be able to do it in person. I would suggest in having spent the last year and a half chairing virtual committee meetings for the ESG, I would be willing to offer up WebEx services for our teleconferences which give us the ability to do things like raise hands, which helps you moderate the demands of the floor. It's a little bit hard to manage the virtual committee meetings without having some sort of additional resources. I'd just offer that up as a potential solution to make that flow a little better in a virtual meeting.



Hal Berghel:

Let's take that up off line. That's certainly fine with me. For those of us with security issues, we'd have to do that somewhere other than our office.

Brett Kandt:

I want to remind you that we are subject to the Open Meeting Law for these meetings so any arrangement you want to make will still have to comply with open meeting law requirements including public access.

Hal:

You included that didn't you, Jim?

Jim Elste:

You could make the teleconference bridge available to the public with simply what I would refer to as the administrative side of managing the meeting through the WebEx.

Hal Berghel:

Where we stand as I sense from the committee, we are all open to in person meetings. Now the question is frequency. Dennis said at least once a year. Would anyone be interested in a bimonthly schedule, every other month, in person, would that be appealing? Anyone?

Brett Kandt:

While you consider that, I do want to remind you that to the extent you have recommendations that you want to make to the Tech Crime Advisory Board, and to the extent any of those recommendations involve proposed legislation, you are going to have some time constraints. Tentatively, I intend to try and schedule the next meeting of the Tech Crime Advisory Board sometime in March and quarterly thereafter, in the June, September, December timeframe. But in terms of submitting proposed legislation, there are certain time lines on that as well and deadlines for the Attorney General and other executive branch agencies to propose legislation. We face deadlines that begin internally starting in June and in terms of submitting bill draft requests to LCB that deadline is typically August 31<sup>st</sup> and the legislators as well have deadlines for their own bill draft submissions. Just be mindful of those deadlines to the extent that you want to propose any legislation that would need to go to the Board itself and then would need sufficient time to go through the process for a bill draft request.

Hal Berghel:

Point taken. Given where we are, however, I don't think we need to worry about this for a few months. Let's go back to the scheduling. How would you all feel about bimonthly meetings?

Dennis Cobb:

The one thing that strikes me that would be good, it would be interesting to perhaps dissect some of the subcommittee work that we are going to be doing and see if there is any merit in defining some work schedule around when we are going to meet to take care of some of the work outside of the formal convening of this subcommittee.

**8. Discussion and possible action on time and location of next meeting.**

Hal Berghel:

OK – let's turn our attention to the next meeting and deal with the frequency at that time? We are over our time limit. Brett, I don't think we want to wait until March so those of you who are still online, could you look to your calendars and let's see what we have for February.

Brett Kandt:

Is it your preference that I check on the availability of videoconferencing north and south for either February 21<sup>st</sup> or 28<sup>th</sup> and go with whichever date is feasible? Is there one date you prefer over the other?

Hal Berghel:

I'm open to both. Do you think it's possible for us to cinch by the middle of next week?

Brett Kandt:

I can check on the availability. Is everyone OK with doing the video conferencing between the AG's office north and south if that's available if I can't use LCB?

All agree, yes.

Brett Kandt:

I will be able to determine immediately whether either of those dates is available for those facilities and get them secured and notify everybody.

Hal Berghel:

My request of the committee would be that everyone hold the 21<sup>st</sup> and 28<sup>th</sup> open from 1:30 pm to 3:00 pm until we hear from Brett the middle of next week or earlier.

**9. Discussion and possible action on future agenda items.**

Hal Berghel:

The possible items for continued work.

Jim Elste:

Can I suggest some action items, Hal? I think it would be helpful if we had an action item for the February meeting that revolved around approving some sort of communication to the next Tech Crime Advisory Board meeting on the progress we've been making. When the Board convenes we will have had two meetings by then. I think it would be appropriate for us to formalize and agree in a communication to the Board.

Hal Berghel:

Excellent idea. I will take that one on. Here's what I have. Brett, if you could look to your notes. 1. Allen Lichtenstein is going to look for sharing some exemplars of possible constitutional amendments on privacy. 2. Jim Elste is going to propose a grand strategy framework to unify our privacy efforts and will work on that with Ira Victor. 3. Allen Lichtenstein will investigate the possibility of using an intern to identify the Nevada statutes with privacy implications. 4. Jim Elste is going to contact the EFF and see what kind of support that they can provide to our efforts. 5. Dennis Cobb is going to create/investigate a framework for information responsibility in handling for the State of Nevada. 6. I don't have a name for this but we were going to follow up on Jim Earl's suggestion that we look into the possibility of joint resolution or creating some text to convey the sense of our interest in privacy and I guess the action item is that Brett is going to talk to the Attorney General to see if that's something that she is interested in us doing.

Brett Kandt:

I think it's just a question -if that's something you think would be appropriate-we'll list that as an action item for you to approve that at the next meeting. You, Mr. Chair, can convey to the Tech Crime Advisory Board that that is the subcommittee's recommendation that the Nevada Legislature pass a joint resolution as previously discussed. I will give inform the Attorney General. Then the two legislative representatives on the Board can decide whether they want to pursue a joint resolution to that effect or not.

Hal Berghel:

Brett, are you suggesting that we actually have some draft language available?

Brett Kandt:

I guess that is up to you. You could always propose it but ultimately, the legislators will work with their attorneys at LCB to craft the language of a resolution.

Jim Elste:

Maybe Jim Earl can elaborate but I got the impression that it was a strategic alternative and one that what we all may find is if we just propose that this is something we want to do without context they may simply say we don't want to do something like that. As a strategic tool understanding how we might do it and then figuring out how we want to apply that strategically might take some discussion on our part.

Hal Berghel:

Jim Earl, this was your suggestion, how do you feel?

Jim Earl:

I think that Jim Elste's got that right. It's worth raising something at the Tech Crime Advisory Board meeting. Hal you might want to do that formally, just as a Board member. I think that it really will only gel with legislators if we got a sense around terminology for a particular resolution.

Hal Berghel:

7 Jim, would you be willing to work with me such over the next couple of months?

Jim Earl:

Sure.

Hal Berghel:

9. Last, we have Stephen Bates and Allen Lichtenstein to report on possible improvements in the Nevada News Shield Statute?

Brett Kandt:

I will list all of those items on the draft agenda which of course will be sent to Chair for review prior to posting.

10. **Public Comment.** The Chair asked if there were any public comments from Carson City or Las Vegas. Hearing none, the next item on the agenda was called.

11. **Discussion and possible action on adjournment.**

Jim Elste:

I will make a motion to adjourn.

Jim Earl:

Second.

Hal Berghel:

Hearing no objections, the meeting is adjourned.