MINUTES OF JOINT HEARING - ASSEMBLY & SENATE JUDICIARY COMMITTEES - 54th Session,
March 1, 1967

Meeting was called to order at 2:00 P.M.

Assembly Committee members present: Wooster, Schouweiler, Hilbrecht, Swackhamer, Lowman, Dungan, Kean, Torvinen, White

Absent: None

The hearing was on a group of bills referred to as the lawyer's bills. Quite a number of attorneys were present to speak and to sit in.

AB 203: Driver's license demerit points.

Mr. Christmas, President of the Teamster's Local 881 of Clark County, was present to speak for the bill.

MR. CHRISTMAS: We made recommendations to the Clark County delegation as pertaining to AB 203. It was a little broader, what we had in mind, than the bill that is before the committee today.

The bill affects professional drivers to a greater extent than other people. The point system, as it is at present, gives no consideration to the professional driver as such. AB 203 increases points for professional drivers by 3 points. This is really not enough extension. Any moving violation is a 4 point offense. In our area, we have a real congested traffic system and a little more than half the state's population. The law as it is at present is not fair to the professional driver who is subjected to this congested traffic more than ordinary drivers. The traffic condition in the Reno area is similar.

Under the last administration there was no real enforcement until the middle of last summer. Now it is affecting many professional drivers. After the 12 points, they can get a work permit if they can meet certain requirements. He has to have full insurance coverage and set down with the department what hours he works and the hours he would be coming to and from work.

With this new bill, if you would raise the points to 16 instead of 15 you would have almost the same thing you have now.

MR. WHITE: Are you against the wording in section 4?

MR. CHRISTMAS: This language is exactly the same as was in previously.

SB 140: Limits definition of "guest" in automobile guest statute.

The hearing on the following five bills was conducted by Senator Warren Monroe.

RICHARD HORTON: Attorney from Reno. All bills that concern trials are called lawyer's bills. If these are lawyer's bills, it is because we are concerned with having to do with the subject matter of these bills in court. Those who will speak in support of the bills are lawyers from Nevada. We are representing the uncommon man, people that have no lobby to speak for them except the lawyers. They are people that have been

injured or will be injured and will suffer economic loss when, in our opinion, the one that is really at fault should be made to pay.

MORTON GALANE: During this last year I have served as president of the Nevada Trial Lawyers Association. I am speaking in that capacity.

The purpose of this bill is to enable a person who occupies a vehicle and is injured or killed as a result of negligence of the driver to go into court and recover damages. Under the present law that person is called a guest. That means that, as a guest, he cannot get his compensation in the event of injury or death, unless they meet higher requirements or standards called gross negligence, intoxication, etc.

There are very few areas where a person or family cannot be compensated for negigence. However, the law does not recognize negligence if the occupant is injured or killed and is called a guest. This law originated during the depression when many people were hitchhikers. Based on that argument, many states enacted laws against these hitchhikers, because they felt he was biting the hand that fed him. Today there are hardly any hitchhikers.

It is said that insurance rates will be higher if the law is changed. We ask the question: Are insurance rates higher in those states that do not have the guest statute? The true situation is that rates are determined by how densely populated the area is, how heavy the traffic congestion, and the percentage of accidents. Has anyone compared the liability premiums for commercial vehicles where one could not be a guest? Has anyone compared premiums for property damage which can have nothing to do with a guest statute so they can see premiums would be affected by taking out the guest statute? There is no relationship between the premiums and whether there is or is not such a law on the books. Either this, or there are not enough claims from people who are now called guests to make a difference. The saving is not such that the insurance companies can pass it on to their policy holders.

It may be argued that guests can engage in collusion with drivers because they may be friends. The answer is that we cannot presume that persons go into law courts and perjure themselves. Good lawyers know how to bring out perjury if it shows itself. Making an exception for people in the same household means that these people will not be able to recover for simple negligence. What we seek in this bill is that the person who accepts an invitation to take a ride in an automobile and is injured can go into court and prove negligence.

AL OSBORN: Attorney from Reno. One thing should be pointed out and that is that the common law before this guest statute provided for recovery by a guest if there was negligence. The guest statute that we have equates the guest with a trespasser.

Allowing a person to get away with negligent driving encourages this kind of driving. Twenty states have done away with the guest statute. It is confusing to prove whether a person was a guest or a passenger. If he is classified as a guest, he cannot recover. The trend is to expand liability. This amendment that is proposed would go a long way toward correcting this condition.

LESLIE GRAY: Attorney from Reno. I was handed much material and authorized to leave it with you. I am not going to try to cover the same ground that has been covered. Instead, I am simply going to leave this material with you: Florida Law Review, Oct. 21, 1966; Time magazine, which discusses a situation which occurred in a family; a list of statutes from the various states in summary, which will tell you where the various states stand. You will see that they are at all extremes. Our statute seeks only to confine the guest statute to certain definite categories, such as mother, father, brother, sister, etc.

WILLIAM J. CROWELL: Attorney from Clark County. Opponent to the bill. Representative of the Pacific Mutual Insurance Alliance.

We have heard the arguments against the guest statutes over the years, but you and I both know that litigation is going to come from the friendship association. It is almost universal to pick up a friend and take him somewhere. The inspiration back of this bill is that an individual who up to now has been your friend now wants to bring an action against you. At the present time, he is covered, for gross negligence.

If the driver is drunk or guilty of gross negligence, that is one thing, but it does not follow that, when in the course of ordinary driving with ordinary negligence he should be liable to suits. Believe me, we can argue all we want to but when the door is opened there will be increases in litigation. Insurance rates will then go up.

SENATOR DODGE: What would the increase in rates be, if this does affect insurance rates?

MR. CROWELL: I do not have this with me but I will get it for you.

NEIL GALATZ: I can't agree that it helps to have your skull cracked by a friendly hand rather than an unfriendly one. Will it help your friendship to suffer financially and physically or to be able to get recompense?

This bill is not trying to do away with previous standards on safe or negligent driving. Mr. Crowell said insurance rates would go up if this bill is passed. The report which Mr. Gray left with you shows that the rates would not vary whether there is a guest statute or not.

Why are we interested in this legislation? The public is entitled to protection. Part of that public is my best friend who gets in the car and rides down the street with me. Should I exercise care on behalf of my friend?

GEORGE VARGAS: I am counsel for the American Insurance Corporation and I am compensated.

There is a fundamental philosophy behind this bill and bunch of other bills pending here and in the Senate. The Nevada Trial Lawyers today is an offspring of the old National Association of Compensation Counsel. I have opposed a group of bills like this over the past years. This group of bills is the same thing. The trial lawyers want this because it will broaden litigation and will offer greater fields for the lawyers. I think this package is all from the special interest group.

They don't ask you to repeal the guest law. They say let's make it apply to someone in your house, which is next door to repeal. It is not fair to come in with a smokescreen. In the Assembly there is a bill that allows husbands and wives to sue one another for torts. The general background of this bill should have been put before this body. Maybe the court should regulate contingent fees. There is no regulation here. If we are going to talk about the public, then let us talk about contingent fees.

MORTON GALANE: Attorney from Las Vegas. To refer to a group of bills as a package does not take away from this body the right to take up each one and find which has merit. To refer to an organization by initials does not take away from the fact that that organizatio has among its members able and experienced defense lawyers. The motivation of the speaker should not be the subject with which a member of the legislature should be concerned. It is the merit and substance about what he speaks that should be the concern.

This bill is designed to enable a particular group of citizens who are now excluded from the opportunity of being compensated. We submit that what we should be concerned with now is not the contingent fee system but whether or not the bill justifies the favorable consideration of this legislative body.

SENATOR MONROE: We must limit the discussion of bills to new material. We have many bills yet to consider here today.

REX JEFFERSON: Defense lawyer from Las Vegas. How you decide on this bill is going to determine who wins the cases.

I would like to make one point: What the guest law does is put guests in automobiles as guests in your home. There are different standards for compensation in a business establishment and in a person's home. The common law did not deal with automobiles because there were no cars in the early days. The question is: Is there a difference between a business invitee and a social friend.

SB 168: Repeals certain conditions and limitations on right to bring action against the state.

WILLIAM O. BRADLEY: I urge passage of SB 168 introduced by Senator Swobe. This is a sovereign immunity act which clarifies and broadens the sovereign immunity act passed by this legislature in 1965. The bill removes numerous impediments that are currently in the sovereign immunity statute to a suit against the state or a political subdivision. The present law has various exceptions which restrict an individual from bringing suits against the state. It also limits recovery to $25,000. The present law also has a provision that the state may insure itself against liability.

SB 168 removes these restrictions, and raises the limits of liability to $100,000. It requires the state to carry insurance to cover liability to this extent. Subdivisions of the state have carried insurance for many years, yet in every instance where they were sued, they would claim sovereign immunity.

I talked to Mr. Knisley and he said it was his understanding that the present bill required insurance coverage and that the policy carrying this liability insurance had the express provision that the defense of sovereign immunity was not to be used. I told Mr. Knisley that this was not in the bill and he was amazed. He said it is illegal to carry insurance on a no-risk.

Sovereign immunity is archaic and has been thrown out in numerous jurisdictions. If an agency of the government injures someone and there is liability coverage, it should be available.

VIRGIL H. WEDGE: Attorney from Reno. This bill strikes me as doing three things: 1. It raises the limit from $25,000 to $100,000; 2. Strikes down certain exceptions and exemptio and 3. Makes insurance mandatory. The $25,000 limit is probably adequate for an ordinary injury, but it is certainly most inadequate for a situation where there is a major injury, such as a multiple amputation. The really serious injury, with the tremendous damages that are suffered, would not be fully compensated with $25,000. I have seen cases where medical costs alone totaled $25,000. If there is going to be a striking down of sovereign immunity, then I can see no reasonable argument for limiting that liability to $25,000, which is sometimes inadequate.

41.032 of the present law sets out conditions and limitations of accidents, exceptions for recovery where injury resulted from negligence, etc. I cannot tell you just what

that section means, but if there is going to be recovery, why should we deny an injured person recovery merely because it falls within that particular exception?

41.344 says there will be no recovery when the injury relates to certain things. Why should a person be denied recovery for that particular negligent conduct?

All subdivisions should be covered by insurance. I would like to see the bill provide that, if the subdivision has insurance , the defense of governmental immunity should not be used. I presently have such a case. The man is a taxpayer in Washoe County, so he helped pay for the insurance policy. This policy says that government immunity should not be raised. This young man went out to help the sheriff on a mission and was injured and lost his arm. We filed suit and right away the defendant argued that we could not recover because of immunity. They used his money and then when he was injured they told him he could not recover because of immunity. This is insuring a risk that does not exist.

I think this bill is good legislation and in keeping with the trend throughout the U.S. I had a case, Rice vs. Clark County, and the Supreme Court struck down sovereign immunity. It is better to spread the burden among all of us, and have society take care of the injured person than to make his family bear all the load.

GEORGE VARGAS: I have only one comment on this bill, on section 2. I am not sure the government could get insurance covering punitive damages. The state may find itself in awkward circumstances.

MR. BRADLEY: If that is the only objection Mr. Vargas has, deleting that provision would meet with no objection from us.

MR. KEAN: What is the difference in premium between $25,000 and $100,000?

A Glen Falls Insurance Company representative said the difference would be probably only 15 to 16%.

SB 188: Provides for interest on damage judgments from date of tort.

RICHARD HORTON: Attorney from Reno. The purpose of the bill is to allow interest on damages from the date of the injury to the date paid. The present law allows 7% from date of judgment. We submit that this is a more fair way of computing interest, since the loss of funds is as of the date of the injury. The debt is due on that date.

RICHARD BLAKEY: Defense Attorney from Reno. I am opposed to the bill because it does not take into account some of the things considered by the legislature. If a person is injured January 1, 1966, he is not obliged to start action until Dec. 31, 1966. There is no control whatever over this by the defendant. Any bill that leaves such a consideration entirely in the hands of one person is not a good bill.

There are many elements of damage in a tort case. Unless the plaintiff sues the defendant for medical bills, all on the date of injury, how could a jury or a judge find the total amount of damages right away? How do you compute interest on a daily basis for a period of three or four years sometimes? How can you judge the amount of humiliation, etc. right off? How can this legislature say you must give a certain amount right now for what you will suffer over a number of years?

Contingent fees suggest the prosecutor will want the largest possible settlement. To disturb the present rule of fixing the date on which interest starts as the date of judgment is, in my opinion, a mistake. There is no man with sufficient judgment before a trial to say what is a proper sum. It would upset our belief of the way a tort case should be conducted, and, we feel, increase all our insurance costs. This is something the committee should take into consideration.

SENATOR DODGE: What, normally, is the period after a suit is filed before it is brought to trial?

MR. BLAKEY: If you hurry, you can get it tried in two years. Sometimes it takes five or six years. Then we are talking about a 42% interest.

HOWARD BABCOCK: Attorney from Las Vegas. The previous speaker forgot that a majority of personal injury suits are settled prior to judgment. No consideration of interest goes into that settlement. If an insurance company is able to delay a judgment, they can have the use of their money for a longer period of time. If the bill should pass, the insurance company would make every effort to get a fair and equitable settlement.

MR. KEAN: If the insurance company loses the case, I assume they remove from their capital a sum that they guess is going to be a proper amount to pay the claim. Do they really withdraw this amount of money from their investments?

Mr. VARGAS: Under law, when a claim appears, the insurance companies have to set money aside for this claim. If they were successful in a claim, and this bill should pass, they would have to pay 7% interest on money they did not have to pay.

MR. HORTON: The money is in reserve but it is still drawing interest for the company.

MR. GALATZ: The bill does need clarification. The money is going to be drawing interest for someone. Who is to get it? We submit that it properly belongs to the victim.

MR. TORVINEN: Would this have any effect on the court calendar?

MR. HORTON: It would lessen the calendar because it would encourage insurance companies to settle quicker. It would lighten the load.

MR. HILBRECHT: Without this bill, if a case goes on a long time, the insurance company would only have to invade their capital for 58%. Every month the case is delayed the insurance company is having to pay less.

MR. BLAKEY: I have defended some cases where the case went on for two years and was settled three days before it was scheduled for trial for the same amount that had been offered two years before.

SENATOR MONROE: I don't think we can assume the insurance company makes 7%.

SB 197: Provides that prevailing party in litigation be allowed as costs a reasonable amount of compensation for expert witness.

FRANK FAHRENKOPF: Attorney from Reno. This bill has to do with what costs can be recovered by the prevailing party. The present law, in awarding the winning party the ability to recover costs, is returning this individual to the status quo. I think this is fair and just.

Every day we are faced with great advances and innovations in our technical knowledge. This has shown itself in the court room. Technical expert opinion is a vital factor. In a personal injury case, both sides have to put on doctors. Whatever the case, expert testimony is necessary. What this bill does, I feel, is to bring these costs up to date. Expert witnesses cost more. To get a doctor may cost you $150 to $250 or more. The bill asks that the prevailing party be reasonably compensated for his costs in presenting the case to the court.

JERRY WHITEHEAD: Attorney from Reno. It would cost you $50 just to talk to Dr. Fletcher up at the University. His appearance in court would cost $350. The bill is unassailable. It would encourage settlement because before a jury trial is held, if you can settle it, there is reason to do so. I think from every side this bill is a good one.

MR. VARGAS: Maybe in connection with this bill, there should be some provision for non-resident's cost bond.

SB 198: Provides for allowance of punitive or exemplary damages in civil actions for willful or wanton misconduct.

MIKE ROTH: Attorney from Reno. I urge passage of this bill, which provides for allowances of punitive damages for willful or wanton conduct. It is a good public policy statute. This will act as deterrent to other people who might perform willful acts.

Sometimes you are not compensated for all the damages received , even if you win a case. Many states have statutes similar to this one, New York, Pennsylvania and many more. "Wantonness" and "willfulness" are the two big words that are being added here. Just as public justice and public policy, this would make excellent legislation and should be passed. Adding these words would clarify the situation.

MR. VARGAS: The word "wanton" introduces a great element of doubt. This would expand the field of uninsured risks.

MR. HILBRECHT: There was an amendment two years ago. Wasn't the law prior to that just about exactly what this bill calls for?

MR. VARGAS: That may be.

MR. SWOBE: The present punitive damage statute is very similar to that of California. If the legislators see fit to substitute the California statute, we would be willing to go along with that.

MR. BLAKEY: I see nothing wrong with uninsured risks for intentional conduct. To define "wanton misconduct" is a job that defies the appellate courts and the trial courts. You should not expand the area of your uninsured risks. Do you object to "willful".

JERRY WHITEHEAD: It has not been decided in this state that punitive damages are uninsurable.

MR. SWOBE: Mr. Blakey, would you be willing to compromise by going to the California statute?

MR. BLAKEY: Yes, I would.

AB 202: Provides that personal injury actions are not assignable.

DICK HORTON: This bill provides that personal injury claims could not be assigned. At present there is some confusion as to whether a creditor can take over a cause of action. I know of no decisions in Nevada that have decided on this point. This bill would make it impossible for these to be assigned to creditors. I represent a great many creditors but I am speaking in favor of this bill. If the man doesn't get his compensation for the injury suffered, he will be a burden on society.

I would not feel that the insurance company should receive back money spent. If they do, they are getting paid for something which they got back. They would then, in fact, be insuring the insurance company.

This bill allows a person to retain the funds he receives and no creditor can take it away.

MR. BLAKEY: I agree with much of what Mr. Horton said, but I wonder at the fairness of a passenger in my car receiving $5,000 from my insurance company and then suing me for it. There is a question of fairness here. He gets paid first by the contract, second by the judge.

AB 219: Permits discovery of existence, nature, and extent of applicable liability insurance in personal injury litigation.

RAYNER KJELDSEN: The question is whether or not the amount of insurance is something that should be discoverable under our rules of procedure. Right now it is not. The question is whether or not an injured party should be able to know how much insurance the person who injured him has. I feel that if this bill is passed it will relieve the court calendar and hurry settlement and be to everyone's advantage.

Merely knowing the amount of the insurance will not give him a great recovery, but makes him better able to know what would be a better settlement for him. I may not have as much experience as some of you, but it has always been my experience, that when all facts are known to all parties the whole thing can be settled much faster and with more justice.

SENATOR MONROE: When you go to court, what are you trying to develop, the amount of injury incurred or the amount of insurance carried?

MR. KJELDSEN: Both, but if you think there is no insurance you will not go to court and sue to try to get what you really should have, if it isn't there.

MR. CROWLEY: Being able to determine the amount of insurance carried makes nothing more than a method of blackmailing the individual into a settlement. You should already have had your case evaluated, and you should sue for that amount, not the amount of insurance carried. We are strongly against using discovery for gambling to see how much you might win.

MR. GALATZ: I agree that you should get what the injury is worth, but on the other hand, if theman appears to have nothing, you feel that there is no use to try to get even that. This bill would help speed settlements and clear the court calendar.

MR. HILBRECHT: Mr. Crowell, isn't it conceivable that an attorney who works on a time basis might not be interested in settling a case right away?

AB 220: Allows certain tort actions between husband and wife.

BOB GRAYSON: Reno Attorney. This new bill will allow one spouse to sue another for a

tort which is not allowed under the common law. The usual objections made to this idea are: 1. Man and wife are one entity; 2. disrupts domestic harmony; 3. would promote fraudulent law suits; 4. there are other adequate remedies.

I submit that none of these rules are valid and the common law should be abrogated. The trend is towards this. All our neighboring states have done away with the common law on this.

1. The concept of one entity is denied in the Universal Property Act, which gives the wife the right to sue her husband.

2. If a wife can sue for a property right, why shouldn't she be able to sue for a tort? Where there is an intentional tort it is doubtful if there is any domestic harmony left.

3. This reason is illogical.

4. The courts allow recovery for property. A person's protection from bodily harm should be as great.

Neither divorce nor criminal action is enough compensation for bodily injuries.

Another thing on that third point: The possibility that some may act dishonestly does not justify someone relief when it is needed.

Insurance policies do not usually cover intentional torts, but it has been brought up that they might. There is a great fear that wives will sue husbands if they have been in an accident. The guest law, even in its new form, will prevent that.

A Professor at Harvard made a study to determine if such a law as this will increase law suits, also insurance rates. Very few complaints have been registered by insurance companies after such legislation has been passed. Certain rights and privileges that go with marriage will discourage suits. This will also serve as a deterrent to intentiona torts as assault and battery.

RICHARD BRAY: Attorney from Reno. I am also in favor of the bill. The common law position was that there was a single entity in the home, a man and a wife. This comes from England at a time when the wife was nothing but a chattel. Now her position has noticeably improved. We look to women now as more or less individuals when they enter the outside world.

One thing to remember is that the ordinary rules of negligence still apply if you pass this bill, and I hope you will. This will be resolved in a court room. Collusion has not proved to be a factor in states where this law has been enacted.

I would call attention to the fact that we have a great many working women. Sometimes there is an estrangement between the man and the wife. If a man has a few drugs and comes home and injures his wife, why shouldn't she have a basis for a claim? The insurance premium has been shared by both these people.

I commend the bill to you.

MR. VARGAS: This would broaden the possibility for law suits which would not occur unless you had a target, the insurance company, to be the defendant.

AB 221: Prohibits intentional concealment, destruction, or alteration of certain medical records.

DAVID HOY: Attorney from Sparks. This bill makes it a felony to alter, move, or destroy medical records. Why is that bad? A man gets the wrong kind of surgery. He goes to another doctor who tells him that the man who performed this surgery should not be allowed to practice. So he goes to his attorney and the attorney begins to prepare the case. He calls the second doctor and asks him if he really said that, and will he testify in court. The doctor says certainly not.

This bill will not bring the doctor into court but it will do this. Major hospitals in the state have tissue committees, pathalogical reports, etc. If they find wrong things done, they can inquire into it. Of course, most of these are honest mistakes. If the error happens again they may suspend the doctor's surgical privileges.

Suppose you have a man injured and it is the doctor's third mistake. The hospital committee has had him on the carpet twice before. If you can get the records of that committee, you have at least got a starting point, to try to get compensation for this injured patient.

The thing that prompted this bill is this: About six months ago, at a luncheon meeting in Reno, there was presented a person from each hospital who explained how all these records are made and kept. The question was asked if these records were available and the answer was no. The question was then asked, would they be available if subpoenaed. The answer was that they would then be lost.

Doctors are wonderful people but they are not above the law. Their records should be available. With the threat of a felony conviction hanging over them, these people will make these records available. Is the penalty too strong? Is it really? Maybe the person is injured for life. This is as bad as burglary in the night time certainly, and that is a felony.

JOHN SANCHEZ: Attorney from Reno. This bill is written basically to the unwritten agreement between doctors and hospitals. When a person comes to you you have to investigate to see if he really has a case. The records should be available without any hanky panky.

AB 222: Creates presumption of negligence of operator of motor vehicle who dies in accident not involving another vehicle.

ROBERT L. MCGEHEE: Attorney from Reno. You are all aware that decisions made in court may be inequitable under certain circumstances, which is the reason for AB 222. This bill would act only in a very limited set of circumstances, only by a passenger or pedestrian in an accident where the driver was killed.

The "Dead Man Rule" states that no party to an action shall be allowed to testify when the other party to the transaction is dead. That leaves you in a pretty bad condition if you are a plaintiff. The defendant is dead, and you are injured as a result of his negligence, but you cannot testify to these facts. This bill places a presumption of negligence on the driver where only one car was involved.

In the case of Ziegler vs Moore the Supreme Court ruled that a plaintiff cannot testify on facts concerning the dead man because of the "Dead Man Rule". The courts are not willing to go around the "Dead Man's Rule". Supposing both occupants of an automobile are killed. The physical facts of the accident show no evidence of any negligence. How can you prove what you know happened? The plaintiff has no way to prove, although the assumption was negligence.

Even more disastrous is the case where the driver is killed and the occupant or pedestrian is injured. He can go to court and sue the estate, but he will not be allowed to testify to any of the facts that he could give. His testimony will be limited to the extent of his injuries.

This bill would not defeat the purpose of the Dead Man's Rule. It will not allow the injured person to testify. However, the effect it will have is to establish a presumption of misconduct or negligence on the part of the deceased driver. Evidence of malfunction of the car would, of course, rebut the evidence of negligence by the driver.

The bill covers a very limited number of circumstances and might not occur too often. I can see no reason why there would be a valid objection to AB 222.

MR. VARGAS: This would change the present law. It would certainly make it easier for the plaintiff to recover in personal injury cases. There is now a presumption of negligence. The attendant circumstances must be such that the accident would not have happened without negligence. This new bill would do away with that limitation.

MR. MCGEEHEE: It is not as easy to avail yourself of this service as it might seem. The facts of the accident have to be such that it could not have happened in any other way than through negligence. I have never heard of Mr. Vargas's doctrine being used.

MR. BLAKEY: I might suggest a compromise between these two. We might consider a bill that would simply abolish that assumption. Rather than establish presumption of negligence, simply abolish presumption of due care.

REX JAMISON: The presumption exists, and human experience tells us, there is usually a relationship between what happened and human negligence. However, something may have been wrong with the road or with the car. Things which might cause an accident are numerous. If there were an indication, the law would apply the presumption without the statute.

MR. HILBRECHT: Coulnd't we amend so that injured person, if alive, could give testimony?

MR. BLAKEY: My compromise suggestion would leave defendant and plaintiff equally situated.

AB 223: Bases allowance of attorneys fees by plaintiff in civil action upon amount recovered.

BOB MOORE: Reno Attorney. The present law says plaintiff may recover attorneys' fees if he has not sought more than $3,000. This bill raises the amount to $10,000. Another suggestion is to give the same privilege to the defendant in the amount of $3,000. At present 70% to 90% of jury verdicts are for a sum of less than $9,000..

What happens in a suit for $5,000, $7,000 or $9,000? Even if the plaintiff recovers what he is suing for, the jury is awarding only the plaintiff for his damages. They are not awarding attorney's fees. If the attorneys get compensation, it must be out of the plaintiff's award, so what happens is that the plaintiff is being penalized.

I believe this would decongest the court calendar. In many cases the plaintiff is faced with this situation. The hospital is calling and demanding the bill be paid, also the doctor, also the garage for repairs on the automobile. These things frustrate the plaintiff, so instead of waiting 18 months to go to court, he will settle in order to get the money in hand, rather than waiting all this time.

I would suggest that this is a very necessary amendment and I would also suggest that the defendant be given the same protection.

CHARLES SPRINGER: The word "may" is used in this legislation. The courts have discretion to grant attorneys' fees. The purpose is to see that the litigant comes out of the court room with what he is supposed to receive, instead of having to pay attorneys' fees out of what he was awarded. The bill simply raises the amount to $10,000. It is reasonable and a good approach to the problem.

REX JAMISON: While we are considering making the plaintiff whole, let us also consider making the defendant whole for a suit that should never have been brought. It is hard to even collect court costs from the defendant when the defense wins the case.

For those plaintiffs who wish to have their attorneys' fees paid, let them post a cost bond, so that the defendant can have his costs if he wins the case. The bill should protect both sides and it does not. Let bonds be posted so there will be money to pay the other side.

RAYNER KJELDSEN: I think the last speaker's point may have merit.

MR. VARGAS: To make it fair, you should raise to $10,000 and permit the prevailing party to have counsel fees with some provision for a bond.

AB 224: Provides for admission of evidence of prior accidents to show existence or notice of dangerous conditions.

C.G. GRISWOLD: This bill came about because of an incident in Reno, where a man stepped on a lettuce leaf and fell and injured himself. The Supreme Court ruled that evidence of prior accident on the ramp was reversible error. Apparently, it was not the same piece of lettuce that he stepped on, so prior slips on other substances in the same place was not admissible.

The bill doesn't intend to change the function of a jury in this type of case. This will give judges some discretion in admitting evidence. If 10 people have slipped on a grape or something on a ramp, it seems to me that the jury should have the right to hear about this, to determine if the owner has done what he should have done to make the premises safe.

I think the bill is reasonable. It tells the trial judge you may admit into evidence that dangerous conditions existed prior to this particular accident. There is still the discretion of the trial judge, the decision of the jury, and the review by the Supreme Court.

MR. VARGAS: There are now rules for notice of conditions on premises. I think this bill is part of a special interest package. We oppose it.

MR. CROWELL: Our position is that all this does is facilitate the work of the attorney to win for his client.

SOME GENTLEMAN: I would propose one amendment in addition to having this evidence offered: a subsection 2, relevant to the submission of evidence of this sort. This should be allowed, not only to show a dangerous condition, but a dangerous propensity in the owner.

The judge's discretion is ever present. There is a protective facet here with discretion.

MR. JAMISON: Every case our office has ever had is about to be overruled. What they are proposing is that irrelevant testimony be allowed in a case. That which is relevant, to show evidence of a dangerous condition, is let in. What is not let in is not relevant. This is a very good rule and it should not be tampered with by this body.

MR. FAHRENKOPF: The bill does say this is admissible. I don't see Mr. Jamison's point about relevancy.

MR. VARGAS: One of the best ways to congest the courts is to pass this bill.

The Joint Hearing was adjourned at 5:40 P.M.