MINUTES

ASSEMBLY JUDICIARY COMMITTEE
April 20, 1977

Members Present: Chairman Barengo
Assemblyman Hayes
Assemblyman Banner
Assemblyman Coulter
Assemblyman Polish
Assemblyman Price
Assemblyman Sena
Assemblyman Ross
Assemblyman Wagner

The meeting was called to order at 7:20 a.m. by Chairman Barengo. All witnesses wishing to testify were sworn in as they testified.

AB 491: Mr. Bud Hicks, stated that this provides for a mini-declaratory relief act which commences on page 3, line 29. He said that it differs from the existing law by broadening the relief to other people than are now covered to include persons found suitable, holding companies, intermediary companies, publicly traded companies, and registered corporations to seek this kind of relief. He stated that the portion of the bill which covers the staying of writs by the district court is already current law and also the portions on extraordinary relief is already law, too. He stated that this simply puts this existing case law into specific statute form and is a result of the Rosenthal case which pointed out this loophole in the statutes. He stated that they felt that the current declaratory relief statute is outmoded and outdated and should be changed in this manner.

The next point Mr. Hicks addressed was that of the use of board investigative reports in the decision making process at the commission level. He stated that they would not object to a qualifying statement which would state "unless used as evidence" may be confidential and subject to privilege. He stated that anything currently used as evidence for the commission is made known to the applicant, etc., and they would not object to that or some similar qualifying language. He noted that what they were primarily concerned about was that those reports which were in the board's files should not be made public if not directly related to the decision making of the commission.

Chairman Barengo and Mrs. Wagner stated that they felt there should be some other way to handle this and that it was too broad. Mr. Hicks stated that if this section would hold up passage of the entire bill that he would suggest that that section be eliminated from this bill and be redrafted for a later time. He did state that the bill itself was very important from legislative intent stand and he felt it was necessary because of some of the other sections of the bill.

Mrs. Wagner asked Mr. Hicks if he felt he would rather have no law

on this or if they would rather have a law which stipulated that whatever information is given to the commission must also go to the applicant. He stated that the latter would be a great departure from the current practice. He stated that he felt that if that were imposed the commission would simply find another method of getting the information that they needed or change their format for reporting that confidential information. He felt this would cause other problems and he would therefore rather not have the change.

Chairman Barengo suggested that they include language which might be as follows: Reports and memoranda prepared by the board and its agents for internal use and not for decision making processes in licensing or discipline shall be confidential. Mr. Hicks said that he felt that would be an awfully hard standard to work by because it would be difficult to tell where investigation stopped and decision making began. A brief discussion followed with no conclusions and again Mr. Hicks stated that the sections should be left out if it caused delay in passage.

Attached as Exhibit A is the revised language to section five of AB 491 which was subsequently submitted by Bud Hicks in response to the discussion on this bill.

AB 355: Chairman Barengo asked Mr. Hicks if he felt that the board would establish regulations covering the same area that was covered in the deleted section five of AB 355, if it were passed in its present form. Mr. Hicks stated that as legal council he did not see how they could do that without statutory authority and that the board is looking for legislative guidance in this area.

Mr. Bob Faiss, council for the Nevada Resort Owners Association, stated that he wished to ask Mr. Hicks if he felt that the board could get around this by granting permission to keep the original markers out of state only if they would pay the costs of audit. Mr. Hicks stated that he could not speak for the board on whether or not they would do this. However, he did point out that it is within their power, as it exists, to do so. Mr. Faiss pointed out that the court's definition of records is that they be complete, accurate and legible and they contend that that is not, necessarily, the originals.

Mr. Faiss proposed an amendment to the bill which sets out their stand on this section and it is attached and marked Exhibit B.

AB 491: Mr. Faiss stated that he felt Mr. Hicks had done a splendid job on this bill but that he did differ with him on one point and that was on line 21 of section two, dealing with supplemental relief which he stated went beyond injunctive relief. He stated that as the law is currently, having won a case, they have the right to go back to court and seek to recover money which was paid by the licensees for the purpose of out-of-state investigations and he stated that this would eliminate that possibility. He stated that if the proposed language were adopted, it would necessitate the instituting of new proceedings for collection of those monies.

AB 684: Assemblyman Dean Rhoads introduced Mr. Ira Kent, past president of the Nevada Cattlemen's Association and member of the Nevada Tax Commission. Assemblyman Rhoads explained that this bill would add three sentences to the current law and help to clear up some problems which exist in the handling of estates in the rural communities. He stated that it would provide that the fees paid to the lawyer hadling the estate would be set by the judge of the estate based on time and involvement of the specific case.

Mr. Kent stated that he felt there had been abuses in the area of the size of the fees charged in settling estates in their part of the state. He stated that he felt this bill would clarify what was to be done and would put the client and the lawyers on a better footing.

In answer to a question from Mrs. Wagner, Mr. Kent stated that there have been cases of exhorbitant fees being charged. He gave an example of a cash estate worth approximately $80,000 and the fee to the attorney was 5% and he felt that for the work involved that was too much. He also stated that there have been other cases were the judge had asked that the attorney set their fee based on the time element involved in the case. Mr. Rhoads stated that Judge Manukian had adopted a procedure much like what is proposed in this bill. Mr. Kent stated that he did not feel that all attorneys abused this, but he did feel that it was a problem in some areas.

SB 453: Judge Richard Minor, president of the Nevada Judges Association and judge in Reno, was first to speak on this bill. He stated that for the last two years there has been a committee working on a code of judicial conduct, based on the American Bar Association standards as modified to meet the problems of Nevada. He stated that this was approved by the electorate in 1976. He stated that presently the committee has been applying the rules and does have jurisdiction over the district court and the supreme court. He stated that this bill was prepared at the request of the Nevada Judges Association and would bring courts of limited jurisdiction under this code and under the jurisdiction of the committee on judicial discipline. He stated that they are still working toward a uniform court system and this bill is a step in that direction. He also pointed out that he felt the justice and the municipal courts should be under the code.

Mrs. Wagner asked Judge Minor if the same procedures were used in both the justice and municipal courts so far as discipline was concerned. Judge Minor stated that it was the same.

AB 693: Mr. L. J. McGee, Chairman of the trust committee of the NBA and Vice President of Pioneer Citizens Bank of Reno, testified on this bill. He stated that he was not in opposition to the bill generally; however, he felt that there should be some provision in the bill which would take into consideration the rights of those people who had already set up trusts which were to mature on the twenty-first birthday of the beneficiary. He stated that he did

not object to the age of majority being eighteen. Mrs. Wagner stated that she felt that the reason this bill was drafted was that this area was overlooked when they changed the other aspects of the age of majority being eighteen. Mr. McGee again stated that he did not find this a problem, except in the area of the existing plans and felt there should be a grandfather clause included in this bill to provide for that situation.

AB 697: Mr. M. Jerome Wright, Reno attorney, and Jess Berkhammer testified together on this bill. He stated that this bill would provide that a private process server could serve writs of execution on property rather than having them servied by the sheriff. He stated that they felt there should be a change in the bill on line 17 so that the judgement holder or his attorney may direct that a writ of execution, etc. This would be so that the service would not be solely in the hands of the sheriff.

Mr. Ross asked Mr. Wright if this would not include more than just the service of a piece of paper. Mr. Wright stated that it would include service of the paper and then receipt of the property or money indicated in the writ. Mr. Ross pointed out that he felt this would lead to altercations between the person serving the writ and the person he or she was serving and this might lead to a severe problem. Mr. Ross then asked if all process servers carried a weapon to protect themselves with. Mr. Wright stated that they did not. Mr. Ross then asked them if all sheriffs carried a weapon for protection and Mr. Wright stated he thought they did. Mr. Ross pointed out that when a sheriff takes possession of a person's property, that person knows that he is doing it with the full backing of the state of Nevada. Mr. Wright said that that was true.

Mr. Ken Vogler, Washoe County Sheriff's Department, was next to address this bill. He stated that his department is in opposition to this bill. He stated that even if the private process server took possession of the property, the sheriff's department would still be involved because the property would have to be turned over to the sheriff and he wondered where the responsibility of the private process server would end technically.

In answer to a question from Mr. Price, Mr. Vogler stated that when a writ is to be served on a person outside the county, then that writ goes to the sheriff of that particular county for service.

In answer to a question from Mr. Ross, Mr. Vogler stated that there is a sale of the property in most cases and that it is conducted by the sheriff regardless of who had picked up the property.

AB 719: Shirley Katt, Washoe County District Attorney's Office Consumer Affairs Division, spoke first on this bill stating that it would provide for procedural changes in the law. She stated that it would effect the assurance of discontinuance section by changing the word "shall" to "may" which would allow more flexibility in dealing with some of their current cases involving deceptive trade practices. She stated that it was their intent to use this as a discretionary tool in dealing with these cases. In

explanation she stated that currently this is used in lieu of taking the concern who is violating the fair trade practices to civil court and is confidential to both parties concerned. This would make the confidentiallity of the document discretionary. She stated that their office felt that some of these orders should be made public and that, in fact, the federal authorities make their concent orders public currently.

In answer to a question from Chairman Barengo, Miss Katt stated that if the assurance is violated, the DA's office or director of consumer affairs can proceed and make the assurance public and then there is a possible fine of $10,000.

Miss. Katt stated that NRS 598.580 is the section which provides for the ten day notice to the person who is violation the fair trade practices and this is the section they wish to have deleted. She stated that this ten day notice provision prevents them from being as effective as they might be because once these people are served, they pick up their assets and leave town. She pointed out that when deceptive advertising is involved they are not limited by this ten day notice provision and changing this as proposed would make those two procedures consistent.

In answer to a question from Mr. Ross, Miss Katt stated that having the discretionary power to make the assurnaces public would help them in negotiating with the people who were doing things which were not in the best interest of the public. She also said that if they had the power to make this public and the concern knew that they could that might prevent a major law suit because of subsequent violation of the assurance.

Miss Katt stated that they are also having some problem with the extreme confidentiallity of the assurances and stated that they cannot disburse this information even to law enforcement agencies currently. She stated that this is a problem inasmuch as sometimes different divisions are working on cases which involve some of the same people in different areas and this makes it hard to cross reference and perhaps match up some of these violators.

In answer to a question from Chairman Barengo, Miss Katt stated that many of these people just move from place to place and continue defrauding people by their bad practices.

Mr. Carl Lovell, City Attorney, Las Vegas, was next to testify on this bill. Mr. Lovell stated that he felt that the city attorneys should be added to the bill on page 2, lines 23 and 41 and on page 3, line 2, because as the bill is written they would not be included and he felt they should be. He stated he felt this addition would help the consumers affairs agencies throughout the state by broadeneing the base.

SB 116: Warden Charles Wolfe, Nevada State Prisons, addressed this bill and stated that it essentially sets up a sound organizational structure for the supervision and administration of the growing penal system in Nevada. He stated that this bill would provide the

general structure and policy for that organization and define the termininology involved within the system. He also pointed out that there was no fiscal impact on this bill as it was removed by the Senate Finance committee.

Deputy Attorney General, Patrick Mullen was next to testify on this bill. He stated that in the last committee hearing on this bill, Assemblyman Mann had stated that he had some questions as to Page 7, section 43 and the term "visits". Mr. Mann had asked if this would include conjugal visits. Mr. Mullen stated that it was the feeling of the attorney generals office that the definition of visits was already codified and did not include conjugal visits and he felt the intent of the bill was clear because of the fate of the bill dealing with conjugal visitation which had been killed earlier this session.

He stated that the second question brought out was regarding section 41 on page 7 which is the pre-release section. He stated that that section was the same as existing law on the subject, namely NRS 209.441. Chairman Barengo asked Mr. Mullen if he could supply to the committee a letter setting out these points and Mr. Mullen stated that it would be supplied promptly. The letter is attached and marked Exhibit C.

He also said that the other sections which were questioned were sections 44 and 45 on page seven and he stated that those sections provide for the same thing as existing law does.

AJR 57: Assemblyman Jim Kosinski, introducer of the bill, handed out to the committee a paper prepared in relation to this bill and it is attached and marked Exhibit D. He stated that the compilation in the exhibit contained the constitutional provisions of the various other states relating to the right of privacy. He pointed out that he felt the language in the Montana statute on page 3 was more clear and direct. He stated that the reason for inclusion of the last sentence in the proposed AJR was to prevent our constitution from being used to strike down an ethics law, perhaps, at a later date. He stated that he felt the language might be a little strong but that it did set out legislative intent

Mrs. Wagner pointed out that she did support the concept, however, she felt that it might cause some problems with some other existing statutes because of the scope of it.

Chairman Barengo stated that he felt that the language on lines 9 through 11 should be deleted. A brief discussion followed and Mr. Kosinski stated that he felt that that would be acceptable and he would suggest that they use the Montana language in the exhibit and make it a new section 19.

SB 379: Mr. Norm Robison, Dep. Atty. General for the Highway Department, and Norm Herring, Research Assistant, were first to speak on this bill. Mr. Robison stated that the bill is an attempt to iron out the differences between the comparative negiligence statute and the joint feasor act which were passed into law at the same time.

He stated that currently if a plaintiff takes two defendants to court on a tort action for recovery for damages and the jury decides in favor of the plaintiff, the plaintiff can then collect, in total, from either of the defendants. Then the defendant who has paid the plaintiff has to take the other defendant to court to get restitution from him for his share of the damages. He said that this puts the state, or anyone else who has insurance, in a position to be responsible for the entire amount, even though he may only have been 5% at fault for the accident. He stated that is contrast with this he felt the legislative intent of the under the comparative section was to let the person be liable only for the amount of negligence that the jury or trier of fact found him liable for. He stated that this conflict in the law has been dealt with in several jurisdications but has not been resolved. He then read from a case law reference in regard to this type of situation and a copy is attached and marked Exhibit E.

In conclusion Mr. Robison stated that he did not feel that this bill, in its current form, was fair to those people and agencies who carry adequate insurance.

In answer to a question from Mrs. Wagner, Mr. Robison stated that he did not believe that Senator Raggio still supported the bill and that the bill was now, as amended by the Senate, 180 degrees different than it was originally written.

Mr. Richard Garrod, Farmers Insurance Group, was next to talk on the measure. He stated that the insurance companies opposed the original version of the bill. He stated that the amendments were worked out between the insurance industry, the league of cities, and the county governments because the origianl language would have created a "deep-pocket" situation. He stated that he felt the bill as it is reprinted would put the blame and responsibility for the losses where it rightly belongs.

In answer to a question from Mrs. Wagner, Mr. Garrod stated that the term "deep-pocket" simply means that the settlement would be exacted from the party who either had insurance, in a case where one defendent was going bare of insurance, or the person who carried the largest insurance policy, in the case were both parties were insured but one was, for instance, a large corporation or government agency.

Mrs. Wagner stated that it surprised her to find out that there are people in the state who are going bare of auto liability insurance and she thought that had been mandated clearly. Mr. Garrod stated that it has not been enforced strictly and, of course, his industry would like to see more people insured. He also pointed out that this bill, in its current form, or one quite similar was defeated last session. Mrs. Wagner stated that she thought the reason that bill had been defeated was not necessarily because of the content of the bill itself, but because of a rider which had been attached to it at the last minute.

Chairman Barengo agreed with Mr. Garrod that there was a problem

with reconciling these two chapters but he did not feel that the reprinted bill would solve the problem. Mr. Garrod stated that he felt that it would help to clarify the point of apportionment.

Mr. Carl Lovell, City Attorney, Las Vegas, was next to speak to the bill and said that throught the City Attorney's Office for the City of Las Vegas they would like to express their support for the bill as amended. He stated that they are in support of the bill because of the experience they have had in this respect. He stated that it has been their experience that when there are multiple defendants and the court rules in favor of the plaintiff, it has been their experience that the plaintiff goes to the municipal government for settlement because they know the city is well-insured. He said he felt that this bill would put upon each defendant the responsibility for their own acts as the court determines.

Mr. Peter Neumann, President of the Nevada Trial Lawyers Association, stated that his association is adamently opposed to this bill though they were in favor of the original draft. He stated that the reason for the bill, as stated before, was the conflict between section 17 of the NRS (the joint contribution among tort feasors act) and section 41 of NRS (the comparative negligence act). He stated that it was their opinion that the conflict between those two section should be resolved in favor of the public who is injured as the result of negligence, not in favor of the insurance industry or the public agencies. He stated that the concept of joint and several liability between tort feasors has been the law in the United States, by court decision, for over 200 years. He made the analogy between civil and criminal responsibility, such as a person being 10% responsible for an accident and a person, as look-out, being only 10% responsible for a bank robbery. He stated that since the person who is look-out is also fully responsible under the law for the robbery, so should the perwon who is only 10% involved in the accident, responsible for the injury to the other person. He stated that this analogy was based on the idea that the injured party should be made whole again and then those who were responsible for the injury should work out the responsibility aspect among themselves, without involving the person who had been injured by their negligence. He stated that this settlement among the defendents is the basis of section 17 of NRS. He also pointed out that it is the administration of justice that has been difficult in this respect because of the subsequent passage of section 41.

Mr. Neumann explained that section 41 of the NRS, dealing with contributory negligence is not the same as the contributory negligence statute in California, for instance. And, that in Nevada there is provision that the plaintiffs settlement is reduced by the percentage of responsibility for the injury that he bears. He pointed out that section 41 also implies that the judge or jury, as the case may be, after finding for the plaintiff shall determine and assign the amount of responsibility between the defendants of the case. He stated that the application of this section was the reason for the extremely complex form that the jury was given to fill out during the Sundowner case and thus the lack of a good decision.

In summary, Mr. Neumann stated that as the bill was origianlly drafted it would have taken out the last section of section 41 and replaced it with language which would have been compatible with section 17, that is that the defendants would be jointly and severally liable. He stated that he did not feel that it was fair that the plaintiff in a case should have his case interrupted by a fight between the defendants over who is liable to what degree. He said that allowing this fight between the defendants to go on during the trial it tends to detract from the injured person's case because of the confusion involved. He stated he felt the passage of the current bill would, in effect, enforce the poor language in the existing section 41 and make the jury in every case where there is more than defendant have to allocate the fault among the defendants.

He stated that in response to a prior comment regarding the state agencies not feeling that they should be financially responsible for an accident in which they only were partially responsible, he felt that if there was a situation existing which the state was responsible for and an accident resulted, then the state should be liable for that negligence even if the other person who was negligent was uninsured. He stated that he felt the state was protected by their maximum liability provisions and also he reiterated that historically when two people contribute to the accident both are responsible for it regardless of the degree of their involvement and the injured party should be made whole. He also pointed out that you cannot compare Nevada with the California law because the laws are not the same.

He stated that he felt that when the city governments and the insurance companies ironed out the amendments to the bill that the public, too, should have been represented and did not feel that they had been. He also stated that he did not feel that it made sense to preclude the injured party from compensation because one of the defendants was uninsured, at least from the point of view of the public, though it might make sense from the point of the insurance companies.

Therefore, in conclusion, he asked that the current draft of AB 379 be defeated.

In answer to a question from Mr. Coulter, Mr. Newmann stated that in Clark County, Judge Thompson has not been allowing the defendants in these types of cases to argue their percentage of responsibility before the jury, but, instead, making them settle it among themselves. But, he pointed out that that is not the way all judges handle this problem as evidenced by the Sundowner case which was before Judge Foreman.

Senator Raggio was next to testify on this bill and stated that he did not like the current draft and wished they had put someone elses name on it when they amended it. He said he felt the current draft would have a harmful effect on the public he wanted to help with the original bill. He said it was his feeling that the bill should be killed rather than go out in its present form.

Mr. Bob Heeny also testified on this bill reiterating many of the points which had been brought out prior. He emphasized to the committee the great prejudice that making the jury apportion responsibility of each defendant during the trial has on the plaintiff and how this results many times in the jury deciding for the defendants simply because it is easier and less confusing to them.

SB 220: Senator Raggio, as introducer, was first to testify on this bill. He stated that he was aware of all the prior testimony on this subject and would try to be brief. He stated that he did was to point out that Nevada is in a quandry at this point regarding the reinstitution of the death penalty. He stated that he personally felt that the reinstitution of the death penalty was an absolute necessity and should be done without delay. He stated that he believed that there is definitely a place for capital punishment in our society and his feeling were based on a broad background in prosecution, statewide and nationally. He said that he believed that capital punishments does act as a deterrent because of cases he had been exposed to.

Mrs. Wagner asked Senator Raggio if he could supply the committee with some data which would reinforce his feelings. Senator Raggio stated that he had not brought his files with him from the DA's office when he left but he assured her that it was the collective experience of prosecutors nationally and law enforcement at every level that it does act as a deterrent. He stated that the point was not that the crimes happened even with the possibility of the death penalty but how many crimes of that nature were averted because of the possibility of the death penalty and those types of statistics are difficult to compile, of course. He also stated that he did not feel that the deterrent factor was the only reason for capital punishment. Others are: 1. Confinement, 2. Protection of society, 3. Crimes which are so agrivated and heinous that those persons, by their actions, lose their right to live among society, 4. Rehabilitation is not always possible, for instance, in the situation of a sociopathic personality who cannot and do not respond to treatment regarless of time of confinement, 5. Life inprisonment is not and seemingly can't be life inprisonment without possibility of parole because it is subject to commutation and parole, and, 6. Society had the right to save itself. He then gave two examples of where the death penalty had served as a deterrent in cases he was connected with and, indeed, had saved persons from being murdered because the person committing the crime did not want to face death himself.

In answer to a question regarding the way the bill had been drafted, from Mrs. Wagner, Senator Raggio stated that historically murder had been the primary offense for which capital punishment could be imposed by the jury as a result of first degree murder finding. He stated that the Supreme court decision regarding capital punishment stated that the only way it could be imposed was were the jury did not have a choice but it was a mandatory capital punishment crime. Since that time the position has changed somewhat and now it is the thought that the jury should have an elective choice and this bill would restore that elective choice.

He also pointed out that this only applies to first degree murder where the elements can be found to be premeditated or done in the commission of a felony, etc.

He stated that he felt that the Senate Judiciary committee had done a excellent job in combining the two original bills and coming up with the bill before the committee. He stated that this would make it an available penalty in all first degree murder, but in order to impose that punishment that jury must find at least one aggravating circumstance (which came from the Assembly bill, primarilly, with a few additions to it). In conclusion he stated that he felt the bill before the committee was a good one and that it conformed with the Supreme court decisions as well as any legislature could enact and he would leave it up to Mr. Manchetti to explain the balance of the bill.

Mr. Gino Manchetti, Deputy Attorney General, opened his remarks on the bill referencing case law which is attached and marked Exhibit F and covers some of the area which Mrs. Wagner had questioned, namely the aspects of deterrence and the need for retribution in society.

He pointed out that as the bill stands now it has been the subject of a lot of work of many people and it is a compromise measure. He stated that in the bill was a list of aggravating and mitigating circumstances which are to be considered by the jury or the trier of fact and that is the crux of the bill. He stated that they did feel that there should be one amendment to the bill regarding the area of state-wide review of the imposition for standardization purposes. He said that this is included in the bill on page 5 lines 20 through 30 and brings up a problem because this would provide that the Supreme court would review the case, on the record, and then consider whether the sentence was proper. He said that it was Judge Batjer's feeling that he did not want the evidence taken de novo at the Supreme court level and would suggest therefore the amendment which is attached and marked Exhibit G which would allow that function to be done by the trial judge.

In answer to a question from Chairman Barengo, Mr. Manchetti stated that he did not know why this amendment wasn't included in the reprint as it was only a procedural question, not a legal one. He said that it would probably be a function of the intermediate appellate court as Chairman Barengo pointed out.

Dave Frank interjected at this point to bring a letter to the attention of the committee which was given to them and a copy is attached and marked Exhibit H and addresses this problem. He said that the language was worked out with the bill drafter and known to Senators Close and Raggio and was, he knew, consistent with the bill. He also stated that he did not know why the Senate Judiciary did not choose to adopt it into the bill, but it might have been that they felt it would be too complex.

Mr. Manchetti stated that he felt the bill, in its present form, will at least be in accordance with the Supreme court decisions

as they now stand. And he also stated that he felt with that one amendment included it would be an excellent bill.

Discussion followed on the merits of a laundry list type bill between Chairman Barengo and Mr. Manchetti with no conclusions drawn.

In answer to a question from Mrs. Wagner, Mr. Manchetti stated that the same jury would be imposing sentence as heard the case because of the testimony aspect. He stated that he knew of no other state that provided that an entire new jury be brought in to determine sentencing. He also stated that the trial by a panel of judges would take place if the defendant waived his right to trial by jury. Larry Hicks interjected here that this had happened only once in the last ten years in Washoe County. Discussion followed on what happens if the jury cannot come to a unanimous decision. Larry Hicks pointed out that when these decisions go to the judges to decide, they do not have to unanimous in their decision unless it involved the death penalty.

Larry Hicks, Washoe County District Attorney, then commented on his feeling toward the bill in general. He pointed out that the mitigating circumstances have been enlarged and referenced page 3, line 30 which broadens the ability of the defense to bring in information to the jury. He also referred to line 21 which now includes mental or emotional distrubance. He stated that there has been no significant broadening of the aggravating circumstances even though they have merged the two original bills. He also pointed out that there has been a provision added whereby there can be a plea accepted in some cases by the court without trial and this is on page 3, lines 38 through 42. He said that the provision for the jury who could't agree was added on page 4, lines 40 through 42 and the provision for the hung jury as discussed before. He stated that he supported the comments regarding the amendments presented by Mr. Manchetti and Mr. Frank because of the feelings of the supreme court in the state who will be hearing the cases ultimately. He also stated that he felt there should be a provision in the bill that states the lack of a comparable case or penalty shall not be, in and of itself, be a specific ground to set aside the imposition of the death verdict.

He stated that he felt that review of the cases should be at the trial court level and immediately following the case because of the toll time takes on the memories of the people involved and the changes that could occur in the attorneys, judges, etc.

Chairman Barengo pointed out that if an appellate court is established this would be one of their functions.

This concluded testimony on today's bills and those not heard will be carried over to the April 21, meeting and the meeting was adjourned at 10:45 a.m.

Respectfully submitted,

Linda Chandler

Linda Chandler, Secretary

EXHIBIT A

STATE OF NEVADA
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April 20, 1977

Hon. Robert Barengo, Chairman
Assembly Judiciary Committee
Nevada State Legislature
State Legislative Building
Carson City, NV 89710

Re: A.B. 491

Dear Bob:

The Assembly Judiciary Committee has requested this office to provide alternative amendments to Section 5 of A.B. 491 which relates to the confidential reports and memoranda of the Gaming Control Board. As I indicated to the committee this morning, it is virtually impossible to adequately define the point of departure between the investigative and decision-making functions of the Board and Commission. Because of the difficulty in ascertaining a point of distinction and because of the lateness of the legislative session, it is not possible to provide you with a satisfactory alternative to that section other than its current form.

It is the belief of the Board, the Commission, and the Attorney General's Office that Section 5, by its own language, limits the scope of the privilege to reports "for internal use" only and that this important limitation sufficiently prevents the use of secret reports as a basis for decisions in licensing and disciplinary matters. As I earlier testified to the committee, if such a report is, in and of itself, used as evidence for a denial or for the imposition of disciplinary sanctions, it is the practice of the Board and Commission to provide such documents to the interested party. If the Legislature believes that the

privilege sought to be created by Section 5 of A.B. 491 will be subject to abuse by the Board and Commission, then it is requested that this particular section be deleted from the bill so that action may be taken upon the other provisions contained therein. The Board and Commission are quite adamant in the belief that their investigative functions should not be impaired in any regard.

Following this morning's hearing I discussed with Bob Faiss the problem raised concerning paragraph 5 of Section 2 of A.B. 491 relating to supplemental relief in declaratory actions. If it would be possible at this late date, that particular paragraph, which commences on line 21, page 1, and continues through line 6 of page 2 should be changed to read as follows:

> "In any proceeding brought under this section, the district court and the supreme court shall not grant any injunctive relief or relief based upon any other extraordinary common law writ to:
> "(a) Any applicant for licensing, finding of suitability or registration; or
> "(b) Any person seeking judicial review of an action of the commission which is subject to the provisions of NRS 463.315."

As indicated to the committee this morning, this provision would not extend to the Board or Commission any powers which are not currently existing. It would, however, place in statute form existing case law. If, because of the pending end of the legislative session, it is not possible to amend this particular paragraph, the paragraph as written is acceptable to the Board and Commission. Mr. Faiss indicated to me that the interests which he represents have no objection to an amendment to this section along the lines proposed herein.

Your assistance in moving this bill out of the committee and before the Legislature for a vote will be greatly appreciated. It is believed that the passage of A.B. 491 is every bit as important to the State as the passage of the

main gaming bill, A.B. 355. Please call me if I can be of further assistance.

Sincerely,

ROBERT LIST
Attorney General

By
A.J. Hicks
Deputy Attorney General
Gaming Division

AJH:lc
cc: Bob Faiss, Esq.
All Committee Members

ASSEMBLY ACTION	SENATE ACTION	ASSEMBLY / SENATE AMENDMENT BLANK
Adopted ☐	Adopted ☐	EXHIBIT B
Lost ☐	Lost ☐	Amendments to Assembly / ~~Senate~~
Date:	Date:	Bill /~~Joint Resolution~~ No. 355 (BDR ~~41-1441~~)
Initial:	Initial:	
[redacted]urred in ☐	Concurred in ☐	Proposed by ~~Committee on Judiciary~~
[redacted] concurred in ☐	Not concurred in ☐	
Date:	Date:	
Initial:	Initial:	

1977 Amendment No. 1064 A

Consistent with Amendment No. 743A.

Amend section 1, page 1, line 2, delete "5," and insert "5.5,".

Amend the bill as a whole by adding a new section designated as section 5.5, following section 5, to read as follows:

"Sec. 5.5. 1. The board or the commission shall not assess or charge any licensee, holding company, intermediary company or publicly traded corporation which is registered with the commission for any investigation conducted after licensing or registration.

Form 1a (Amendment Blank) 3044A

Drafted by GL:ml Date 4-19-77.

To Engrossment (4) CFB

AS Form 1b (Amendment Blank)

To Engrossment 2487

1701

2. A licensee is not required to maintain within this state credit instruments, "I.O.U.s," markers or other original documents evidencing indebtedness to the licensee if the licensee maintains exact copies of them within this state. If the licensee elects to maintain any such original documents outside this state, the board may examine such documents at any place where they are maintained. In that case, the board may require the licensee to reimburse it only for the costs of transportation, food and lodging, not to exceed the amount of the sub-

owance and travel expenses provided by law for state employees. shall be billed to the licensee with a full accounting, list of the original documents examined."

Sec. ——. 1. The board or commission shall not assess or charge any licensee, holding company, intermediary company or publicly traded corporation which is registered with the commission for any investigation conducted subsequent to licensing or registration.

2. A licensee shall not be required to maintain within this state credit instruments, I.O.U.s, markers or other original documents evidencing indebtedness to the licensee so long as the licensee maintains exact copies thereof within this state. If the licensee elects to maintain any such original documents outside this state, the board may examine such documents at any place they are maintained. In such instance, the board may require the licensee to reimburse the board only for the costs of transportation, food and lodging, as limited by law or regulation governing out-of-state travel by state employees. The costs shall be billed to the licensee with a full and complete accounting, including an itemization of the original documents examined.

EXHIBIT C

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

April 20, 1977

The Honorable Robert R. Barengo
Chairman, Assembly Judiciary Committee
Legislative Building
Carson City, Nevada 89710

RE: S.B. 116, SUBSTANTIVE CHANGES FROM NRS CHAPTER 209

Dear Mr. Barengo:

On April 20, 1977, S.B. 116 was presented to your committee. At that time, you requested a visual list of major changes proposed by S.B. 116 which are not included in NRS Chapter 209.

It should be first noted that this Bill mainly proposes to establish a Department of Prisons to modernize our current prison system. The Prison Board will remain in tact; however, the Warden will be designated "Director" and each separate institute of the Nevada State Prisons will be headed by a "Superintendent." S.B. 116 interposes the above designations as applicable throughout the Nevada Revised Statutes.

Briefly, the major changes of S.B. 116 are the following:

1. Updating all accounting and business practices at the Nevada State Prisons to comply with State Purchasing requirements and recommendations from a recent Legislative Audit.

2. Eliminating the requirement upon the Warden to compile a monthly list of necessaries for the Nevada State Prisons to the Prison Board.

3. Eliminating the requirement upon the Warden to compile a quarterly report to the Prison Board regarding all manufactured articles by inmates at the Nevada State

Prisons. (This data in 2 and 3 is available upon request from the Prison Board, but would be too expensive and time consuming to comply with the current NRS mandates. In practice, these reports have not been solicited by the Prison Board.)

4. Sections 36 and 37 of S.B. 116 make it mandatory upon the Director to perform the duties provided therein. Chapter 209 states these duties to be discretionary with the Warden.

5. NRS 209.300-209.330 regarding imprisonment of female prisoners outside the state is deleted by S.B. 116. This was done because this section is superfluous in view of the Intrastate Compact Act and our Women's Prison in Carson City.

6. Chapter 209.340-209.480 regards employment of prisoners at the Nevada State Prisons. The change proposed by S.B. 116 is to prevent a "forced labor concept" as provided in Chapter 209 to optional employment for inmates giving good time credits and other monitory rewards. This change was necessitous to comply with U. S. Supreme Court requirements against involuntary servitude and is also, in the opinion of the Warden, the more realistic approach.

7. Chapter 209.483-209.497 is deleted by S.B. 116 to be included in Chapter 216 of NRS. This was done to place the work release program under the appropriate NRS chapter from which it is administered.

It is here noteworthy to state again that there is no fiscal impact by S.B. 116.

The legislative history of this Bill during this session has been the following: the Senate Governmental Functions Committee, the Senate Finance Committee, the Senate Judiciary Committee, and the Assembly Governmental Affairs Committee. It is my understanding that this Bill has received a "do pass" by all committees with minor changes.

Sincerely,

ROBERT LIST
Attorney General

By: Patrick J. Mullen
Patrick J. Mullen
Deputy Attorney General
Criminal Division

PJM:np

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

ARTHUR J. PALMER, *Director*
(702) 885-5627

EXHIBIT D

LEGISLATIVE COMMISSION (702) 885-5627
JAMES I. GIBSON, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*
INTERIM FINANCE COMMITTEE (702) 885-5640
DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
John F. Dolan, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
EARL T. OLIVER, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

December 11, 1976

Assemblyman James N. Kosinski
P.O. Box 1129
Reno, Nevada 89504

Dear Jim:

Please find enclosed what material I have gathered to date on the "right to privacy." State legislation has been acquired from the following states:

1. Iowa - Privacy of records and telephone conversations.

2. Arizona - Privacy of records and public agency documents on individuals.

3. New Mexico - Privacy of oral communications.

4. Washington - Privacy of public records.

I have also perused the state constitutions of the 50 statutes for specific provisions guaranteeing a "right of privacy." There are seven states whose constitutions specifically provide for this right. They are Alaska, Arizona, Hawaii, Illinois, Louisiana, Montana and South Carolina and the actual sections are attached.

As I'm sure you know, most states have listed in the declaration of rights article search and seizure provisions which come very close to ensuring personal privacy without specifically mentioning it.

I have requested additional information on this subject from the national American Civil Liberties Union and the American Bar Association. Don will forward to you any additional material on this subject we receive in my absence.

I hope this material will be of assistance to you.

See you in January.

Sincerely,

Mary Lou Love
Deputy Researcher

MLL/jd
Encl.

STATE CONSTITUTIONS

PROVISIONS ON THE "RIGHT TO PRIVACY"

Alabama.....None.

Alaska.....Article I, section 22, Right of Privacy. "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." Added, 1972.

Arizona.....Article II, section 8, Right to Privacy. "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

Arkansas.....None.

California.....None.

Colorado.....None.

Connecticut....None.

Delaware.....None.

Florida.....None.

Georgia.....None.

Hawaii.....Article I, section 5, Searches, seizures and invasion of privacy. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures, and invasions of privacy shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized or the communications sought to be intercepted."

Idaho.....None.

Illinois.....Article I, section 6, Searches, seizures, privacy and interceptions. "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized."

Indiana.....None.

Iowa.....None.

Kansas.....None.

Kentucky.....None.

Louisiana.....Article I, section 5, Right to Privacy. "Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court."

Maine.....None.

Maryland.....None.

Massachusetts.....None.

Michigan.....None.

Minnesota.....None.

Mississippi.....None.

Missouri.....None.

Montana.....Article II, section 10, Right of Privacy. "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

Nebraska.....None.

Nevada.....None.

New Hampshire.....None.

New Jersey.....None.

New Mexico.....None.

New York.....None.

North Carolina.....None.

North Dakota.....None.

Ohio.....None.

Oklahoma.....None.

Oregon.....None.

Pennsylvania.....None.

Rhode Island.....None.

South Carolina.....Article I, section 10, Searches and seizures; invasions of privacy. "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained. (1970 (56) 2684; 1971 (57) 315.)"

South Dakota.....None.

Tennessee.....None.

Texas.....None.

Utah.....None.

Vermont.....None.

Virginia.....None.

Washington.....None.

West Virginia.....None.

Wisconsin.....None.

Wyoming.....None.

Office of Research
12-11-76

Corp. Report prepared under a grant from the Nat. Institute of Law Enforcement and Criminal Justice, L.E.A.A., Dept. of Justice, 1975) p. 5 [hereinafter referred to as "Rand study"].)

The reality of criminal investigation, the Rand study reveals, is very different. To determine what factors contribute to case solution the Rand researchers analyzed a large sample of cleared crimes from a variety of crime types. In more than half of the cleared cases, they found, the identification of the offender was available at the time of the initial report because (1) the offender was arrested at the scene; (2) the victim or witness identified the suspect by name and address; or (3) some evidence available at the crime scene, such as a license plate or employee badge number, uniquely determined the identity of the suspect. Most of the remaining cases that were eventually cleared were solved through routine administrative actions: fingerprint search, informant tips, reviewing of mug shots, or arrests in connection with the recovery of stolen property. On the basis of these findings, the Rand study concluded that "with the possible exception of homicide, if investigators performed only the obvious and routine tasks needed to clear the 'easy' cases, they would solve the vast majority 97 percent) of crimes that now get cleared. All r efforts in relation to other cases have a very marginal effect on the number of crimes cleared." (Rand study, pp. 13-14, italics added.)

One of the policy implications of these findings, according to Rand, is that police departments should reduce follow-up investigation on all cases except those involving the most serious offenses. The rationale of this proposal: "Our data consistently reveal that a regular investigator's time is preponderantly consumed in reviewing reports, documenting files, and attempting to locate and interview victims and witnesses on cases that experience shows will not be solved. Our data show, moreover, that most cases that are solved are solved by means of information spontaneously provided by a source other than those developed by the investigator. It follows that a significant reduction in follow-up investigative efforts would be appropriate for all but the most serious offenses in which public confidence demands some type of response." (Rand study, p. 27.) That Rand made this recommendation--that the present level of follow-up investigative effort be reduced--is all the more significant in light of its finding that, under present practice, investigative efforts in over 86 percent of unsolved cases are suspended by the end of the first week. (Rand study, p. 19.)

In light of the Rand study, we can see that more, not less, than reasonable diligence was exercised in the investigation of this case. Despite the length of the majority opinion, this was, after all, not the crime of the century. It was a $15,000 arson and insurance fraud that involved no injury to innocent persons. Nevertheless, several investigators worked on it intensively for over two months before suspending their efforts because the suspect had an alibi and no motive was apparent. To demand a higher standard of diligence, given society's limited resources and apparently unlimited propensity to crime, is completely unrealistic.

CLARK, J.

I CONCUR:

McCOMB, J.

19

Comperative Negligence Applied To Liability of Tortfeasors

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE AMERICAN MOTORCYCLE ASSOCIATION, a nonprofit corporation,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

VIKING MOTORCYCLE CLUB, an unincorp. assn., JERRALD KINDSVOGEL, STEPHEN ELSNER; DENNIS ALDERETTE, CHUCK ALEXANDER, PAUL ASHFORD, DON BOYER, JOHN GRANVILLE, LEE GREENWOOD, DON HARRIS, RAMON LOWE, FRED MacDOUGALL, HOYT MORROW, RICK RAINO, RON PARTON, BENNY PADILLA, GARY REICHENBACK, ED SCHLUP, JIM SOVIE, ED TOMMASINO, RICHARD TRUSTY, JIM TUCKER, BILL TURNER, BOB PHILLIPS, ROB PHILLIPS, GLEN GREGOS, a minor by and through his Guardian ad litem GORDON GREGOS; GORDON GREGOS and "DOE" GREGOS,

Real Parties in Interest.

2d Civil No. 49032

COURT OF APPEAL-SECOND DIST.
FILED
JUN 10 1977
CLAY ROGERS, JR. Clerk
Deputy Clerk

Lawler, Felix & Hall, Thomas E. Workman, Jr., Erwin E. Adler, and Jane H. Barrett for Petitioner.

Association of Southern California Defense Counsel, John W. Baker, Caywood J. Borror, Francis Braidenbach, Richard B. Goethals, Stephen J. Grogan, Henry E. Kappler, Kenneth E. Moer; W. F. Rylaarsdam, and Lucien A. Van Bulle as Amici Curiae on behalf of Petitioner.

No appearance for Respondent.

Jack A. Rose for Real Parties in Interest Glen Gregos, a minor by and through his Guardian ad Litem Gordon Gregos, and Gordon Gregos.

Robert E. Cartwright, Edward I. Pollock, Leroy Hersh, David E. Baum, Stephen I. Zetterberg, Robert C. Beloud, Ned Good, Arne Werchick, Sanford M. Gage, Leonard Sacks, and Joseph Posner, as Amici Curiae on behalf of Real Parties in Interest Glen Gregos,

a minor by and through his Guardian ad Litem Gordon Gregos, and Gordon Gregos.

In Li v. Yellow Cab Co. (1975) 13 Cal.3d 804, our Supreme Court: (1) opened for reexamination in light of changed conditions the California statutory law of negligence to the extent that it is declaratory of the common law (13 Cal.3d at pp. 814, 821-822); (2) adopted the rule of "pure comparative negligence" in lieu of the doctrine of contributory negligence codified in Civil Code section 1714 (13 Cal.3d at pp. 827-828); (3) determined the easy questions of the effect of the judicially adopted rule upon the doctrines of last clear chance (13 Cal.3d at pp. 824-825) and assumption of risk (id.); and (4) left the hard questions such as application of the new principle in multi-party situations to the "'trial judges of this State'" unencumbered by specific guidelines (13 Cal.3d at p. 826).

The petition for writ of mandate which is here before us raises the manner in which Li v. Yellow Cab is to be applied to the situation of multiple parties, all of whom are asserted to be negligent in a manner proximately contributing to a plaintiff's injury. Specifically, the petition concerns the right of a named defendant to bring persons not named as defendants into the action by a cross-complaint alleging the negligence of those persons and its proximate causation of the injury for which the complaint seeks to hold the defendant-cross-complainant liable.

We conclude that: (1) Li v. Yellow Cab's rule of "pure comparative negligence" fastens liability upon a person "in direct proportion to his negligence"; (2) the rule of comparative negligence requires modification of California's pre-Li doctrine of joint and several liability of concurrent tortfeasors;[1] and (3) a defendant may cross-complain to bring other persons into the action so that the proportion of his negligence may be compared to theirs and the modified rule of liability of concurrent tortfeasors applied to the situation of multiple parties.

Facts

On January 14, 1973, 16-year-old Glen Gregos was injured while participating in a cross-country motorcycle race. Acting through Gordon Gregos, his guardian ad litem, Glen filed an action to recover for his injuries. The lawsuit names as defendants the American Motorcycle Association (AMA), Viking Motorcycle Club (Viking), Jerrald Kindsvogel, Stephen R. Elsner, Continental Casualty Company of Chicago (Continental), and Does 1 through 200.

As eventually amended, the complaint is framed in six causes of action.

The first cause of action is based in negligence. It asserts that AMA, Viking, and other named defendants (excluding Continental) sponsored, managed, administered, and controlled a race for novice motorcycle riders and solicited and encouraged members of the public to participate in it for an entry fee of $5. Glen paid the entry fee and entered the race. The first cause of action claims that by reason of the negligence of the defendants in sponsoring, operating, controlling, and managing the race and in soliciting entrants, Glen suffered personal injuries causing damage of $3,000,000, plus the cost of future medical care.

The second cause of action asserts fraud of the named defendants other than Continental. The fraud is related to the defendants' failure to perform on promises made to Glen to instruct him in racing technique, evaluate his capability, and place him in races with entrants of similar ability.

The third cause of action seeks compensatory and punitive damages from Continental. It alleges the bad faith refusal of Continental to make payments on a $10,000 medical reimbursement policy covering injuries to participants in AMA sanctioned amateur events.

The fourth cause of action sounds in fraud and is based upon the allegedly false and untrue representation that the motorcycle race in which Glen was injured was an event officially sponsored by AMA and Viking. Continental and its agents are asserted to be parties to the fraud.

The fifth cause of action claims that the various defendants intentionally inflicted emotional distress upon Glen by causing his insurance claim against Continental to be dishonored.

The sixth cause of action alleges a conspiracy among the defendants to violate Glen's rights generally in the fashion claimed in the preceding causes of action.

AMA answered the amended complaint denying its charging allegations and asserting affirmative defenses. After an unsuccessful attempt to file a cross-complaint bringing Viking, various of its agents, and Glen's parents, one of whom is his guardian ad litem, into the case on theories of indemnity and comparative negligence, AMA filed a second motion for leave to file a cross-complaint. The proposed cross-complaint is framed in two causes of action asserted against Glen's mother and father.

The first alleges notice to Glen's parents that motorcycle competition is a dangerous sport, that the parents participated in Glen's decision to enter the event, that his entry would not have been received without parental consent, that Glen's father gave his written consent which permitted Glen's participation, that Glen's parents knew of the extent of Glen's training and negligently failed to exercise their powers of supervision over their minor child by allowing his entry in the race, and that while AMA's negligence, if any, was passive, that of Glen's parents was active. The first cause of action seeks indemnity from the parents if AMA is found liable to Glen.

The second cause of action seeks declaratory relief. It alleges that Glen has failed to join his father and mother as defendants in the action, reasserts their negligence, and asks for a declaration of the relative negligence of those

[1] We do not consider the impact of the rule of Li upon joint tortfeasors acting in concert or upon vicarious liability. Resolution of those questions is unnecessary to our decision and the matter at bench is sufficiently difficult of itself.

to Glen's injury so that the rule of Li v. Yellow Cab may be applied.

Believing itself bound by existing case law pre-dating Li, the trial court denied AHA's motion to file its cross-complaint. AHA petitioned this court for a writ of mandate compelling the trial court to grant its motion. Recognizing that the problem must be a recurring one in which the trial courts are in need of guidance, we issued our alternative writ.

Pre-Li Law

Prior to Li v. Yellow Cab Co., supra, 13 Cal.3d 804, California in general applied an all-or-nothing concept of negligence. If a person's negligence was a proximate cause of damage to a person or property, he was deemed responsible for the entire damage. That responsibility barred a plaintiff whose own negligence was a proximate cause of the damage from recovering any part of it. (4 Witkin, Summary of Cal. Law (8th ed.) Torts, § 683.) That responsibility rendered a joint or concurrent tortfeasor liable for the entire damage and it was improper for a court to apportion damages among tortfeasors. (4 Witkin, Summary of Cal. Law (8th ed.) Torts, § 35; 1 Harper & James, The Law of Torts, §§ 10.1, 10.2.) In either event, the person's negligence precluded his loss from being shifted in part to another who was also at fault. While the all-or-nothing principle was mitigated somewhat as to plaintiffs by rules such as last clear chance (4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 714-721), and to defendants by a limited right of contribution among judgment debtors who, at the plaintiff's election, were named in the lawsuit (Code Civ. Proc., §§ 875, 876; 4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 43-49; cf. Schwartz, Comparative Negligence, § 16.7, pp. 261-263), and by a complex system of equitable indemnity to persons "secondarily" liable from persons whose liability was "primary" (4 Witkin, Summary of Cal. Law (8th ed.) Torts, §§ 50-52), nevertheless the underlying California principle of negligence was founded on attaching total responsibility to each person whose lack of care contributed to the damage.

Consequences of Li v. Yellow Cab

Demise of all-or-nothing doctrine. In Li v. Yellow Cab Co., supra, 13 Cal.3d 804, our Supreme Court prospectively terminated the operation of the all-or-nothing doctrine as applied to plaintiffs seeking damages for negligence (13 Cal.3d at pp. 812-813), and replaced it with a principle "under which liability for damage will be borne by those whose negligence caused it in direct proportion to their respective fault." (13 Cal.3d at p. 813; i.e., "negligence," 13 Cal.3d fn. 6a at p. 813.) Carrying the principle to its ultimate limit, the high court opted for a rule of "pure comparative negligence" rather than the "50% system" of comparative negligence followed by most jurisdictions which had previously abandoned the rule of contributory negligence. (13 Cal.3d at p. 827.) The court's action was taken despite recognition that the superseded rule had been codified in Civil Code section 1714. (13 Cal.3d at p. 821.)

Logical extension of the high court's action in Li, considerations of policy, and the language of the Li opinion itself point to the conclusion that the decision requires a drastic revision of the principles governing liability of concurrent tortfeasors.

Concurrent tortfeasors - traditional bases of joint and several liability. The pre-Li principle of joint and several liability of concurrent tortfeasors is founded: (1) on the "all-or-nothing" concept allocating full responsibility to each person whose negligence contributes to damage without respect to the proportion of his negligent conduct to that of others; (2) the proposition that a plaintiff totally "innocent" because he is not contributorily negligent is entitled to recovery from all "guilty" defendants; (Schwartz, Comparative Negligence, § 16.1); and (3) an assumed inability of the fact finding process to apportion negligent fault. (1 Harper & James, The Law of Torts, § 10.2; see also Anno., The Doctrine of Comparative Negligence and its Relation to the Doctrine of Contributory Negligence, 32 ALR 3d 463, 492, § 15.

Effect of Li upon Traditional Bases of Joint and Several Liability

The impact of "pure" comparative negligence eliminates totally the all-or-nothing rule on the side of the tort coin which determines the plaintiff's right of recovery. The same reasoning which impelled our Supreme Court to take the step it did is equally applicable to the obverse side of the coin - that which determines the extent of the relative liability of persons who may be liable in negligence to the plaintiff.

That reasoning is synthesized in Li as "The basic objection to the doctrine [of contributory negligence] - grounded in the primal concept that in a system in which liability is based on fault, the extent of fault should govern the extent of liability - remains irresistible to reason and all intelligent notions of fairness." (13 Cal.3d at p. 811.) In a system where the liability of several defendants concurrently causing an injury is based upon fault, the conclusion is equally irresistible that the extent of the fault of each should govern the extent of liability of each.

Li now permits recovery in negligence to a plaintiff who is himself negligent. The rule of comparative negligence dispels any foundation for joint and several liability of concurrent tortfeasors based upon the plaintiff's total "innocence." In its pure form as adopted in California, the rule eliminates any basis for joint and several liability founded on the proportion that the plaintiff is necessarily less at fault than others whose negligence contributed to his damage.

Li accepts the ability of the fact finding process to apportion degrees of negligence. In so doing, it eliminates the previously assumed inability to apportion fault among tortfeasors as the foundation of joint and several liability.

Policy consideration. Because the fundamental of Li eliminates the pre-Li basis of joint and several liability of

concurrently negligent tortfeasors, we must determine whether sound policy requires continuation or rejection of the principle.

The law of other jurisdictions which have adopted one form or another of comparative negligence is of no help in the policy choice. Examination of the approach of other states shows no discernible pattern of the consequences of the elimination of the complete bar of contributory negligence upon the question of joint versus several liability of concurrent tortfeasors.

The lack of pattern is disclosed in the chart prepared from a cursory examination of the law of sister jurisdictions which appears in the appendix to this opinion. Georgia, Kansas, Nevada, New Hampshire, South Dakota, and Vermont have apparently opted for the principle of several liability. Joint liability has been retained in Arkansas, Colorado, Florida, Hawaii, Idaho, Maine, Mississippi, New Jersey, New York, North Dakota, Pennsylvania, Utah, Wisconsin, and Wyoming. Oregon and Texas preserve the rule of joint liability where a defendant's negligence equals or exceeds that of the plaintiff, but apply the principle of several liability where the defendant's negligence is less than that of the plaintiff. Minnesota provides for joint liability if the plaintiff is free of negligence, but otherwise applies the rule of several liability. (Citations in appendix.)

The policy underpinning of the various rules in other states is not readily apparent. Ascertaining the rationale in other jurisdictions is complicated to the point of impossibility by their variants of comparative negligence.

Finding no guidance in the experience of other states, we approach the issue by reference to the underlying basis of the California law of negligence. That basis is essentially one of loss shifting (Fleming, Foreword: Comparative Negligence at Last - By Judicial Choice, 64 Cal.L.Rev. 239, 242) in a system founded upon socializing the loss incident to tortious conduct. (Kaiser Steel Corp. v. Westinghouse Elec. Corp. (1976) 55 Cal.App. 3d 737.)

Virtually all negligence law involves a decision on the extent of loss shifting from the plaintiff to someone else, and generally from that someone to still others. Where, as in California, tort law is imbedded in the concept of socialization of loss, the "others" are taxpayers, consumers, or purchasers of insurance. To a significant degree, judicial adoption of rules of loss shifting represents a decision whether or not to call upon the finite social fund which represents the tax base upon which the legislative arms of government assert their charge. As judicially enunciated loss shifting calls upon the fund, its availability for use to improve education, to enhance equality of opportunity for the disadvantaged, to reduce street crime, to lessen the burden of local property taxation, and to serve any of the multitude of other growing fiscal needs of government is reduced.

The policy choice must thus be made in light of the social costs involved. The choice is complicated because, by reason of an ingrained system of contingent fees, claims administration costs, and expense incident to a complex procedure of litigation, somewhere between $2.00 and $3.00 of cost must be socialized to cover $1.00 of loss shifted from the individual. (See Keeton, O'Connell and McCord, Crisis in Car Insurance (1968) p. 90; State of New York Insurance Department, Automobile Insurance, pp. 34-36.)

Specifically, then, we must determine whether, in the context of a system of pure comparative negligence, cost at the ratio of two or three to one of loss should be shifted to society to cover a plaintiff's risk that one of several defendants whose concurrent negligence caused him damage is insolvent. In our view, it should not.

Plaintiffs have historically borne the risk of insolvency of the defendant where only one defendant negligently caused damage as well as the total loss where they themselves were negligent. Only in the situation where the plaintiff was not negligent, one of the defendants was insolvent, and another responsible in damages was the risk of the negligent insolvent defendant socialized by the rule of joint and several liability.

Adoption of the rule of pure comparative negligence has now shifted a portion of the loss formerly borne by the negligent plaintiff to the social fund. There is good reason not to burden the finite fund further with the risk of insolvency of one of several defendants.

By definition, the policy choice must be made where one of multiple concurrent tortfeasors is financially responsible and another is not. By reason of pure comparative negligence, the plaintiff will necessarily recover something in that situation where prior to Li he would recover nothing if he himself were negligent. It is a small trade-off from the plaintiff's standpoint that he rather than the societal fund bear that portion of his misfortune attributable to insolvency of one of several tortfeasors where the fund rather than the plaintiff now bears a part of the cost of damage to which the plaintiff's negligence contributed.

Unquestionably, the rule of several liability is an imperfection in a system of socialization of loss from tortious conduct if one of the concurrent tortfeasors is unable to respond in damages. But the system is already grossly imperfect. Vicissitudes of a fact finding process not attuned to professional expert witnesses and measures of damage incapable of objective determination result in loss which should be shifted remaining with some plaintiffs while other plaintiffs profit by overcompensation at the expense of the societal fund.

Language of Li. The language of our Supreme Court in Li is consistent with the elimination of the principle of joint liability of concurrent negligent tortfeasors. The Li court says "the extent of fault should govern the extent of liability" (13 Cal.3d at p. 811); "liability for damages will be borne by those whose negligence caused it in direct proportion to their respective fault" (13 Cal.3d at p. 813), and "the fundamental purpose

of [the rule of pure comparative negligence] shall be to assign
consibility and liability for damage in direct proportion to
ount of negligence of each of the parties" (13 Cal.3d at
, while using the term "parties" synonymously with
"persons." (Richards, Parties or Persons? Dispelling the
Parties in Action Only Myth in Li v. Yellow Cab Company, 16
Cal. Courts Commentary, No. 2, March 1976.)

New rule. We thus conclude that the adoption of the rule of pure comparative negligence in Li abrogates the pre-existing rule of joint and several liability of concurrent tort-feasors. Where the Li rule applies, liability among concurrent tortfeasors must be apportioned according to their respective degrees of negligence with each liable to the plaintiff only for his proportion. (See Prosser, Comparative Negligence, 41 Cal.L.Rev. 1, 33.)

--The rule which we here adopt accommodates the principle of comparative negligence to the California statutes governing contribution among tortfeasors in a manner which is simple in application and which preserves separation of powers.

Liability of concurrent tortfeasors in direct proportion to their relative degrees of fault is a highly desirable if not necessary element of any system of comparative negligence. leming, The Supreme Court of California 1974-1975, Foreword: parative Negligence at Last - By Judicial Choice, 64 Cal. L.Rev. 252-253 (hereafter Fleming).) Proportionate liability can be ac d in the face of California statutes providing for contribu-ion in equal rather than proportionate shares among only those ortfeasors who have been named as defendants in an action at he plaintiff's option in one of three ways: (1) by adoption of he rule of several liability; (2) by judicially rewriting Code f Civil Procedure sections 875 and 876[2] which codify the rule f contribution among tortfeasors who are jointly liable; or 3) by extending the California rules of indemnity so that they pply to concurrent negligent tortfeasors without reference to the existing distinction between primary and secondary liability. (Fleming, at pp. 253-256.)

Judicially rewriting Code of Civil Procedure sections 875 and 876 treads dangerous ground. Neither section is declaratory of the common law. The jurisprudential concept which allowed the Li court to modify the rule of contributory negligence codified in Civil Code section 1714 thus does not afford the same leeway of judicial decision in the case of sections 875 and 876. To extend the Li concept to statutes which, while not declaratory of the common law, are functionally related to others which are, is to open a great portion of the California substantive law statutes to judicial amendment. That intrusion upon the fundamental principle of separation of powers is one that should not be undertaken if it can be avoided.

Extension of the California concepts of indemnity to achieve proportionate liability of jointly liable tortfeasors also intrudes upon the power of the Legislature. Code of Civil Procedure sections 875 and 876 state that liability is to be borne equally and not proportionately. (Fleming, at p. 255.) The extension has the additional vice of inviting multiplicity of litigation rather than disposing of the entire matter in one proceeding absent a requirement of compulsory joinder or cross-demand which is extremely difficult to formulate.

Several liability, however, satisfies the need simply and without invasion of separation of powers. (Fleming, at p. 256.) Joint liability of concurrent tortfeasors derives from the common law. The common law adaptation of principles to changed circumstances which is the basis of Li is equally applicable to abandonment of joint liability where Li applies. Several liability is simple in application in the Li setting. The jury special verdicts or court findings of fact which are necessary to the application of Li determine the apportionment of liability among concurrent tortfeasors so that the action is resolved in one place, at one time, as to all persons involved.

We recognize that our conclusion of the consequences of the rule of Li to the principle of joint and several liability of concurrent tortfeasors is at variance with language and possibly the rationale of decision of Court of Appeal opinions in Stambaugh v. Superior Court (1976) 62 Cal.App.3d 231, and Safeway Stores, Inc. v. Nest-Kart (1976) 63 Cal.App.3d 934. (See also E. B. Wills Co. v. Superior Court (1976) 56 Cal.App.3d 650.) Neither Stambaugh nor Safeway addresses the policy considerations of loss shifting or the logical extension of Li v. Yellow Cab which we treat as controlling of our decision. Stambaugh seems bottomed on a false analogy to statutory systems accompanying a rule of comparative negligence with fully compatible principles of contribution and indemnity. Stambaugh also rests on the by no means clear assumption that Code of Civil Procedure section 877, dealing with settling tortfeasors, is not limited by Li and its statutory history to tortfeasors who are jointly liable. Neither case considers the undesirable consequences of the rule of comparative negligence without a compatible method

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2 "§ 875. [Existence and incidents of right of contribution]
(a) Where a money judgment has been rendered jointly against two or more defendants in a tort action there shall be a right of contribution among them as hereinafter provided.
(b) Such right of contribution shall be administered in accordance with the principles of equity.
(c) Such right of contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof. It shall be limited to the excess so paid over the pro rata share of the person so paying and in no event shall any tortfeasor be compelled to make contribution beyond his own pro rata share of the entire judgment.
(d) There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person.
(e) A liability insurer who by payment has discharged the liability of a tortfeasor judgment debtor shall be subrogated to his right of contribution.
(f) This title shall not impair any right of indemnity under existing law, and where one tortfeasor judgment debtor is entitled to indemnity from another there shall be no right of contribution between them.
This title shall not impair the right of a plaintiff to satisfy judgment in full as against any tortfeasor judgment debtor."

876. [Pro rata share]
(a) The pro rata share of each tortfeasor judgment debtor shall be determined by dividing the entire judgment equally among all of them.
(b) Where one or more persons are held liable solely for the tort of one of them or of another, as in the case of the liability of a master for the tort of his servant, they shall contribute a single pro rata share, as to which there may be indemnity between them."

to achieve equality of treatment of defendants. Neither considers the jurisprudential consequences of attempting to reach that equality in the face of a statutory scheme which is inconsistent with the objective if the rule of joint and several liability is retained. Thus, while according deference to the post-Li Court of Appeal decisions, we cannot follow them.

Parties to the Action

The substantive rules which we have here articulated require procedural companions. Once the principle of allocation of liability among defendants based upon their respective degrees of negligence is accepted, there is a patent interest in having all persons whose fault contributed to the injury before the court in one action. One set of findings of fact or one set of special jury verdicts can then determine the entire matter as to all who are involved. Multiple litigation can be avoided. A thicket of imponderable questions of the consequences of Li to the overly complicated California law of indemnity which preceded Li is penetrated if not skirted.

The policy reasons indicating the adoption of procedural rules which will permit the litigation to include as defendants all persons whose negligence contributed to the injury are particularly pertinent here. AMA, named as a defendant in the litigation, seeks to bring into it as a party defendant the guardian ad litem of the minor who is the plaintiff. Accepting, as we must at this stage of the litigation, AMA's allegation that the guardian ad litem's negligence contributed to Glen's injury (see Gibson v. Gibson (1971) 3 Cal.3d 914, 921), it is hardly conceivable that the guardian ad litem would sue himself. It is not much more likely he would sue his wife, who is the other defendant to whom AMA's motion to file a cross-complaint is directed.

Disposition

Let a peremptory writ of mandate issue directing the superior court to vacate its order denying AMA's motion for leave to file a cross-complaint and to enter a new order granting the motion.

CERTIFIED FOR PUBLICATION.

THOMPSON, J.

We concur:

WOOD, P. J.

LILLIE, J.

Jurisdiction	Type of Comparative: Pure	Type of Comparative: 50/50 Aggregate	Type of Comparative: Adult-erated: 50/50 Each Defendant	Type of Comparative: Adult-erated: Other	Liability: Joint & Several	Liability: Several Only	Liability: Joint Where Defendant's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportionate to Fault	Uniform Contribution Among Joint Tortfeasors Act Adopted	Defendant Permitted to Join and/or Seek Contribution as to Parties Not Named by Plaintiff	Notes
Alaska	1							No 2	2	2	
Arkansas		3						No			
Colorado			9		10					11	12
Connecticut		13								14	
Florida	15				16			May-be 17/19	19	18	
Georgia				20		21					
Hawaii			22		23			May-be 24/25	25	26	
Idaho			27		28			Yes 29		30	
Kansas		31				32				33	
Maine		34			35			Yes 36		37	
Massachusetts		38						No 39	39	39	
Minnesota			40		41	42		Yes 43			44
Mississippi	45				46			No 47	47	47	
Montana			48								
Nebraska				49							
Nevada			50			51		No 52	52	52	
New Hampshire			53			54					
New Jersey			55		56			May-be 57/58	58	58	
New York	59				60			Yes 61		62	
North Dakota			63		64			May-be 65/66	66	66	
Oklahoma				67							
Oregon		68					69	Yes 70			
Pennsylvania		71			72			May-be 73/74	74	74	
Rhode Island	75							No 76	76	76	
South Carolina			77								
South Dakota				78		79		No 80	80	80	
Texas		81					82	Yes 83		84	
Utah			85		86			Yes 87		88	
Vermont		89				90					

Jurisdiction	Type of Comparative: Pure	Adulterated: 50/50 Aggregate	Adulterated: 50/50 Each Defendant	Adulterated: Other	Liability: Joint & Several	Liability: Several Only	Liability: Joint Where Defendant's Fault Equals Plaintiff's; Otherwise Several	Contribution Proportionate to Fault	Uniform Contribution Among Joint Tortfeasors Act Adopted	Defendant Permitted to Join and/or Seek Contribution as to Parties Not Named by Plaintiff	Notes
Wisconsin			93		94			Yes 95			
Wyoming			96		97			Yes 98		99	
The following states and specific Federal Acts apply comparative negligence rules to the limited fact situations indicated:											
Arizona	100										
District of Columbia	101										
Iowa	102										
Kentucky	103										
Michigan	104										
North Carolina	105										
Ohio	106										
Virgina	107										
F.E.L.A.	108										
Jones Act	109										
Death on the High Seas Act	110										

1. Kautz v. State of Alaska (1975) 540 P.2d 1037
2. Alaska Stat. §§ 09.16.010 to 09.16.060
3. Ark. Stat. Ann. §§ 27-1763 to 27-1765, 27-1730.1 to 27-1730.2
4. Walton v. Tull (1962) 356 S.W.2d 20
5. Id., at p. 25
6. Ark. Stats. §§ 34-1001 to 34-1009
7. Lacewell v. Griffin (1949) 219 S.W.2d 227
8. Id.; contribution not limited to parties named by plaintiff; unclear as to whether defendant has right to join parties not named by plaintiff.
9. Colo. Rev. Stat. Ann. §§ 13-21-111, 41-2-14
10. Bass v. United States (1974) 379 F.Supp. 1208, 1209
11. Colo. Rules of Civil Procedure, Rule 22
12. Id.; no contribution, indemnity only.
13. Conn. Gen. Stat. § 52-572h(a)
14. Id., § 52-104
15. Hoffman v. Jones (1973) 280 So.2d 431
16. Stuart v. Hertz Corp. (1974) 302 So.2d 187
17. Lincenberg v. Issen (1975) 318 So.2d 386, 391
18. Stuart v. Hertz Corp., supra, 302 So.2d at p. 194, fn. 3
19. Fla. Statr. Ann. § 768.31
20. Ga. Code Ann. §§ 105-603, 94-703; Smith v. American Oil Co. 49 S.E.2d 90; Elk Cotton Mills v. Grant (1913) 79 S.E. 836
21. Higgenbotham v. Ford Motor Co. (5th Cir. 1976) 540 F.2d 762 (no apportionment in strict liability cases)
22. Haw. Rev. Stat. § 663-31
23. Id., §§ 663-31, 663-12, 663-17
24. Id., § 663-12
25. Id., §§ 663-11 to 663-17
26. Id., § 663-17(a)
27. Idaho Code Ann. § 6-801
28. Id., § 6-804
29. Id., § 6-803(3)
30. Id., § 6-803(4)
31. Kan. Stat. Ann. § 60-258a(a)
32. Id., § 60-258a(d)
33. Id., § 60-258a(c)
34. Me. Rev. Stat. Ann., Tit. 14, § 156
35. Id., § 156; see also Packard v. Whitten (1971) 274 A.2d 169, 180
36. Packard v. Whitten, supra, 274 A.2d 169
37. Packard v. Whitten, supra, 274 A.2d at p. 174
38. Mass. Gen. Laws Ann., Ch. 231, § 85; 54 Mass.L.Q. 140
39. Id., Ch. 231 B, §§ 1 to 4
40. Minn. Stat. Ann. § 604.01(1)
41. Id.
42. But see Kowalski v. Armour & Co. (1974) 220 N.W.2d 268
43. Minn. Stat. Ann. § 604.01(1)
44. Where plaintiff contributes by his own negligence to the injury, liability is several only; where there is no contributory negligence attributable to plaintiff, liability is joint and several.
45. Miss. Code Ann. § 11-7-15
46. Saucier v. Walker (1967) 203 So.2d 299
47. Miss. Code Ann. § 85-5-5
48. Mont. Stat. § 58-607.1
49. Neb. Rev. Stat. § 25-1151
50. Nev. Laws § 41.141(1)
51. Id., § 41.141(3)(a)
52. Id., §§ 17.215 to 17.325
53. N.H. Rev. Stat. Ann. § 507:7-a
54. Id.
55. N.J. Stat. Ann. § 2A:15-5.1
56. Id., § 2A:15-5.3
57. Id., §§ 2A:15-5.2, 2A:15-5.3
58. Id., §§ 2A:53A-1 to 2A:53A-5
59. N.Y. C.P.L.R. § 1411; see also Rosmann v. LaCrega (1971) 270 N.E.2d 313
60. N.Y. C.P.L.R. §§ 1401-1402

95

1. Id., § 1401, 1402; Dole v. Dow Chemical Co. (1972) 282 N.E.2d 288

N.Y. C.P.L.R. §§ 1401-1403; Berliner v. Kacov (1974) 361 N.Y.S.2d 477

63. N.D. Cent. Code § 9-10-07

64. Id.

65. Id.

66. Id., §§ 32-38-01 to 32-38-04

67. Okla. Stat. Ann., Tit. 23, § 11

68. Ore. Rev. Stat. § 18.470

69. Id., § 18.485

70. Id.

71. Pa. Stat. Ann. § 2101

72. Id., § 2102

73. Id.

74. Id., §§ 2082-2089

75. R.I. Gen. Laws Ann. § 9.20.4

76. Id., §§ 10-6-1 to 10-6-11

77. S.C. Code § 46-802.1

78. S.D. Comp. Laws § 20-9-2

79. Burmeister v. Youngstrom (1965) 139 N.W.2d 226 (several unless plaintiff has right of recovery against other party)

80. S.D. Comp. Laws §§ 15-8-11 to 15-8-22

81. Tex. Vernon's Civ. Stat. Art. 2212a, § 1

Id., § 2(c); see also Goodyear Tire & Rubber Co. v. Edwards (1974) 512 S.W.2d 748

83. Tex. Vernon's Civ. Stat. Art. 2212a, § 2(b)

84. Id., § 2(g)

85. Utah Code Ann. § 78-27-37

86. Id., §§ 78-27-40(2), 78-27-41(1); see also 1973 Utah L.Rev. 406, 421

87. Id., § 78-27-40(2)

88. Id., § 78-27-40(3)

89. Vt. Stat. Ann., Tit. 12, § 1036

90. Id.

91. Howard v. Spafford (1974) 321 A.2d 74

92. Wash. Rev. Code, Ch. 4.22.010

93. Wis. Stat. § 895.045; but see Chille v. Howell, 149 N.W.2d 600, suggesting that plaintiff cannot recover if his negligence is greater than that of all defendants, rather than greater than that of any one defendant. See also Vincent v. Pabst Brewing Co. (1970) 177 N.W.2d 513 where, over a strong dissent, the majority refused to switch to pure comparative negligence but suggested that upon failure of the Legislature to so act within a reasonable period of time the court would judicially make the change.

94. Chille v. Howell, supra, 149 N.W.2d 600

95. Bielski v. Schulze (1962) 114 N.W.2d 105

96. Wyo. Stat. Ann. § 1-7.2(a)

97. Id., §§ 1-7.3(d), 1-7.4(a)

98. Id., § 1-7.3(c); cf. Pure Gas & Chemical Co. v. Cook (1974) 526 P.2d 986, 989, fn. 3

Id., § 1-7.3(d)

100. Ariz. Stat. Rev., §§ 23-801 to 23-808, limited to damages arising from manufacturing, mining, building, etc.

101. Dist. of Col. Code §§ 44-401 to 44-404, limited to damages arising from employment by common carrier only.

102. Iowa Code Ann. §§ 479-124, 479-125, limited to damages arising from employment by railway.

103. Ky. Rev. Stat. §§ 277.310 to 277.320, limited to damages arising from employment by railway.

104. Mich. Stat. Ann. §§ 17-461 to 17-464, limited to damages arising from employment by railway.

105. N.C. Gen. Stat. § 62-242, limited to damages arising from employment by railroad.

106. Ohio Rev. Stat. §§ 4973.07 to 4973.09, limited to damages arising from employment by railroad or other employment not covered by workers compensation.

107. Va. Code §§ 8-641, 8-646, limited to damages arising from employment by railroad and damage to traveler on public highway caused by railroad.

108. 45 U.S.C. §§ 51-60

109. 46 U.S.C. § 688

110. 46 U.S.C. § 766

Contract May Permit Interest Higher Than Legal in California

IN THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

COURT OF APPEAL - FOURTH DIST.

FILED

DEC 24 1976

EDWIN J. MUSZYNSKI, Clerk

PETER P. GAMER, etc.,

Plaintiff and Appellant,

v.

duPONT WALSTON, INC., et al.,

Defendants and Respondents.

4 Civil No. 14578

(Sup. Ct. No. 345904)

APPEAL from a judgment of the Superior Court of San Diego County. Louis M. Welsh, Judge. Affirmed.

Peter P. Gamer; White, Price, Peterson & Robinson for Plaintiff and Appellant.

MacDonald, Halsted & Laybourne, Peter Brown Dolan; Hervey, Mitchell, Ashworth & Keeney and Thomas R. Mitchell for Defendant and Respondent.

Peter P. Gamer, plaintiff, has appealed from a judgment entered February 7, 1975, in his class action against duPont Glore Forgan Incorporated (Glore Forgan), defendant, to recover allegedly usurious interest paid to Glore Forgan. The judgment followed the granting of Glore Forgan's motion for summary judgment.

The action was commenced on August 30, 1973.

Plaintiff is a California lawyer who in 1966, while practicing in Beverly Hills, arranged for a securities margin account with Walston & Co., Inc. (Walston) at the Beverly Hills office of that firm.

The agreement signed by plaintiff in opening the margin account was on a printed form prepared by Walston. It contained 20 numbered paragraphs, numbers 4, 18 and 19 of which were as follows:

> "4. All securities and commodities or any other property, now or hereafter held by you, or carried by you for the undersigned (either individually or jointly with others), may from time to time and without notice to the undersigned, be carried in your general loans and may be pledged, repledged, hypothecated or rehypothecated, or loaned by you to either yourselves as brokers or to others, separately or in common with other securities and commodities or any other property, for the sum due to you thereon or for a greater sum and without remaining in your possession and control for delivery a like amount of similar securities or commodities."
>
> "18. The provisions of this agreement shall

EXHIBIT F.

This exhibit was a syllabus of GREGG v. GEORGIA and was case number 74-6257. It was argued March 31, 1976 and decided on July 2, 1976.

This was a voluminous case and can be referred to in the secretary's record.

EXHIBIT G

ASSEMBLY ACTION	SENATE ACTION	~~ASSEMBLY~~ / SENATE AMENDMENT BLANK
Adopted ☐	Adopted ☐	Amendments to ~~Assembly~~ / Senate
Lost ☐	Lost ☐	Bill ~~/Joint Resolution~~ No. 220 (BDR 16-519)
Date:	Date:	Proposed by Committee on Judiciary
Initial:	Initial:	APR 11 1977
Concurred in ☐	Concurred in ☐	
Not concurred in ☐	Not concurred in ☐	
Date:	Date:	
Initial:	Initial:	

~~THIRD READING~~

1977 Amendment Nº 704 A

Amend section 3, page 2, line 39, delete "is" and insert "may be".

Amend section 3, page 3, after line 14 insert:

"9. The murder was committed upon one or more persons at random and without apparent motive."

Amend section 4, page 3, line 15, delete "is" and insert "may be".

Amend section 4, page 3, delete lines 28 and 29 and insert:

"7. Any other mitigating circumstance."

Amend section 5, page 3, line 33, delete "district" and insert: "[district] prosecuting".

Amend section 5, page 3, line 37, delete "district" and insert "prosecuting".

Amend section 7, page 4, line 6, delete the comma after "circumstances" and insert "as set forth in section 3 of this act,"

Amend section 8, page 4, line 11, delete "which the state has" and insert:

"alleged by the prosecution upon which evidence has been".

Amend section 8, page 4, delete lines 13 and 14 and insert:

"jury as to the mitigating circumstances alleged by the defense upon which evidence has been presented during the trial or at the hearing."

Amend section 8, page 4, delete lines 16 and 17 and insert:

"(a) Whether an aggravating circumstance or circumstances are found to exist;

(b) Whether a mitigating circumstance or circumstances are found to exist; and".

Amend the bill as a whole by adding a new section, to be designated as section 10, following section 9, to read:

"Sec. 10. Chapter 176 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. When a jury or panel of judges has returned the death sentence,

the judge who accepted the guilty plea or conducted the trial shall review the sentence to determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases in this state, if any, considering both the crime and the defendant.

2. The department of parole and probation shall assist the district court in its review of the propriety of a death sentence by furnishing the court with a synopsis of the facts for each case in which the death sentence was returned during the 5-year period preceding the date of the verdict in the case under review.

3. The synopses of death penalty cases shall include:

(a) The title and docket number of the case, and a citation to the opinion of the supreme court, if rendered;

(b) The name of the defendant and the name and address of his attorney;

(c) A narrative statement of the offense as shown in the record;

(d) The mitigating circumstances found, if any;

(e) The aggravating circumstance or circumstances found;

(f) The sentence returned by the trier of fact;

(g) The judgment of conviction and the sentence;

(h) The decision on review; and

(i) Any other information which the court may prescribe.

4. The department shall furnish the state and the defendant with copies of the synopses.

5. If the judge determines that the sentence of death is excessive or disproportionate to the penalty returned by the trier of fact in similar cases in this state, he shall set the sentence aside and impose a sentence of imprisonment for life without possibility of parole. If the judge determines that the sentence of death is not excessive or disproportionate to the penalty returned by the trier of fact in similar cases in this state, the sentence of death shall be imposed. If there are no similar cases in this state, the absence of such cases is not a ground for setting aside the penalty and imposing a sentence of imprisonment for life without possibility of parole."

Continuation Page 2

____ ASSEMBLY AMENDMENT

7044 SENATE AMENDMENT

ASSEMBLY BILL NO. _____
ASSEMBLY JOINT RESOLUTION NO. _____

SENATE BILL NO. 220
SENATE JOINT RESOLUTION NO. _____

Amend the bill as a whole, renumber sections 10 and 11 as sections 11 and 12.

Amend section 10, page 5, delete lines 27 and 28 and insert:

"(b) Set the sentence aside and remand the case for a new penalty hearing:

(1) If the original penalty hearing was before a jury, before a newly empaneled jury; or

(2) If the original penalty hearing was before a panel of judges, ~~before a panel of three judges~~ before a panel of three district judges which shall consist, insofar as possible, of the members of the original panel; or".

Amend the bill as a whole, insert a new section, to be designated as section 13, following section 11, to read:

"Sec. 13. If the punishment of death is held to be unconstitutional by the court of last resort, the substituted punishment shall be imprisonment in the state prison for life without possibility of parole."

EXHIBIT H

SUPREME COURT OF NEVADA
JUDICIAL PLANNING UNIT
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

TELEPHONE (702) 885-5076
TOLL FREE IN NEVADA:
(800) 992-0900, EXT. 5076

April 19, 1977

The Honorable Robert R. Barengo
Nevada State Assembly
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Assemblyman Barengo:

Re: SB 220 - Death Penalty Bill

SB 220 is scheduled for hearing before the Assembly Judiciary Committee tomorrow. To facilitate the committee's review of the bill, I have enclosed a proposed amendment relating to the nature of appellate review of death sentences. We would appreciate your consideration of this amendment in light of the following problem.

Section 10 of the bill (page 5) provides for automatic review of the death sentence by the supreme court, regardless of whether the automatic appeal of the conviction is waived. Line 21 provides that "the sentence shall be reviewed on the record by the supreme court . . . . " Lines 28-30 provide that the court is to consider "[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases in this state, considering both the crime and the defendant." These provisions conflict in that the similar cases required for the "proportionality review" will not be part of the record made in the trial court.

The attached amendment would alleviate this problem by requiring the trial judge to review every sentence of death for excessiveness or disproportion. The judge's review would then be part of the record on appeal to, or for the automatic review of a death sentence by, the supreme court.

It has been suggested that the supreme court could use some other source for identifying those similar cases to be considered in reviewing a death sentence. First, it is not clear from the bill what that source might be. Second, the bill seems to contemplate, as noted above, that the source for the "proportionality review" is to be the record made in district court. Third, the jurisdiction of the supreme court is limited by section 4 of article 6 of the Nevada constitution to "questions of law alone in all criminal cases . . . . " The court has accordingly limited the scope of its inquiry in criminal appeals to the four corners of the record before it; matters raised on appeal which are not in the record are not considered.

Thank you for your consideration of this request.

Sincerely,

Dave Frank

DF:bn
Enclosure
cc: Cameron Batjer, Chief Justice
Members of the Assembly Judiciary Committee

ASSEMBLY ACTION	SENATE ACTION	ASSEMBLY / ~~SENATE~~ AMENDMENT BLANK
Adopted ☐ Lost ☐ Date: Initial: Concurred in ☐ Not concurred in ☐ Date: Initial:	Adopted ☐ Lost ☐ Date: Initial: Concurred in ☐ Not concurred in ☐ Date: Initial:	Amendments to ~~Assembly~~ / Senate Bill ~~Joint Resolution~~ No. 220 (BDR 16-519) Proposed by Committee on Judiciary

1977 Amendment

Amend the bill as a whole by adding a new section, to be designated as section 10, following section 9, to read:

"Sec. 10. Chapter 176 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. When a jury or panel of judges has returned the death sentence, the judge who accepted the guilty plea or conducted the trial shall review the sentence to determine whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases in this state, if any, considering both the crime and the defendant.

2. The department of parole and probation shall assist the district court in its review of the propriety of a death sentence by furnishing the court with a synopsis of the facts for each case in which the death sentence was returned during the 5-year period preceding the date of the verdict in the case under review.

3. The synopses of death penalty cases shall include:

(a) The title and docket number of the case, and a citation to the opinion of the supreme court, if rendered;

(b) The name of the defendant and the name and address of his attorney;

(c) A narrative statement of the offense as shown in the record;

(d) The mitigating circumstances found, if any;

(e) The aggravating circumstance or circumstances found;

(f) The sentence returned by the trier of fact;

(g) The judgment of conviction and the sentence;

(h) The decision on review; and

(i) Any other information which the court may prescribe.

4. The department shall furnish the state and the defendant with copies of the synopses.

5. If the judge determines that the sentence of death is excessive or disproportionate to the penalty returned by the trier of fact in similar cases in this state, he shall set the sentence aside and impose a sentence of imprisonment for life without possibility of parole. If the judge determines that the sentence of death is not excessive or disproportionate to the penalty returned by the trier of fact in similar cases in this state, the sentence of death shall be imposed. If there are no similar cases in this state, the absence of such cases is not a ground for setting aside the penalty and imposing a sentence of imprisonment for life without possibility of parole."

Amend the bill as a whole, renumber sections 10, 11 and 12 as sections 11, 12 and 13.