

MINUTES OF THE  
MEETING OF THE SENATE COMMITTEE  
ON FINANCE

SIXTY-FIRST SESSION  
NEVADA STATE LEGISLATURE  
March 6, 1981

The Senate Committee on Finance was called to order by Chairman Floyd R. Lamb, at 8:00 a.m., Friday, March 6, 1981, in Room 231 of the Nevada State Legislature Building. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator James I. Gibson, Vice Chairman  
Senator Eugene V. Echols  
Senator Norman D. Glaser  
Senator Lawrence E. Jacobsen  
Senator Thomas R.C. Wilson  
Senator Clifford E. McCorkle

COMMITTEE MEMBERS ABSENT:

Senator Floyd R. Lamb, Chairman

STAFF MEMBERS PRESENT:

Ronald W. Sparks, Chief Fiscal Analyst  
Dan Miles, Deputy Fiscal Analyst  
Tracy L. Dukic, Secretary

OTHERS PRESENT:

Howard E. Barrett, Chief, Budget Division  
Scott Baker, State Industrial Attorney  
James Salo, Appeals Officer

The meeting was called to order by Senator James I. Gibson at 8:00 a.m. and the budget for the Industrial Attorney's Office was presented by Mr. Scott Baker, State Industrial Attorney, on page 991.

State Industrial Attorney

Mr. Baker stated that the State Industrial Attorney's Office consists of three lawyers and two secretaries. Two of the three lawyers comprising this office are located in the Las Vegas area and Mr. Baker presides over the northern end of the State. He told the committee that they currently represent at least 50% of the appealing injured workers in Nevada. He said there has been an increasing caseload which has created an additional need for one attorney and one secretary in the Las Vegas office.

Senator Glaser asked Mr. Baker how many cases went through the State Industrial Attorney's Office last year.

Mr. Baker replied that there were 288 cases, which was a 72% increase over the prior year.

Senator Glaser asked how much of an increased caseload Mr. Baker is anticipating will occur this year.

Mr. Baker replied that he does not feel that there will be as great an increase this year as there was last year, because of the advent of self-insured insurance undertaken by the private sector. He is anticipating an increase in the complexity of the types of cases that are brought to him and the work required to adequately present these individuals.

Senate Committee on Finance  
March 6, 1981

Senator McCorkle expressed concern about the Nevada Industrial Commission's appeals process.

Mr. Baker explained the current process of appeal through the NIC for Senator McCorkle.

Senator Jacobsen asked why Mr. Baker believes that his caseload is going to be more involved than five years ago.

Mr. Baker replied that the private companies that are involved in litigation are hiring private firms that specialize in self-insured claims. He said that the firms usually go into greater detail which he believes will make it necessary for the State Industrial Attorney's Office to spend more time and more money involving themselves in the pursuit of these cases.

Senator Jacobsen inquired into the Out-of-State Travel expenses.

Mr. Baker replied that this account is necessary because they have to have a contingency fund in order to attend depositions or to do some other type of investigative work outside of the State. He stated that this is becoming more prevalent as many of the people who have been injured in Nevada are moving to other states.

Senator McCorkle inquired if the reimbursement from the billing of employers will become a reversion in the 1983 budget.

Mr. Barrett indicated that it would be; payments by the self-insured will reduce the amount of money put into the program by the NIC which will later be shown as a reversion.

Senator Gibson asked if the claimant is held responsible for all the expenses incurred during the pursuit of his claim.

Mr. Baker indicated that the claimant is responsible for the expenses for all three sides of the case -- the Judge, the attorney and his own representative.

Senator Gibson asked how they compute the fee that the claimant pays.

Mr. Baker told him that he received a formula from the actuaries at NIC and Howard Barrett's office for an hourly billing rate of \$55 dollars per hour for the attorney service.

Mr. Baker explained that the increase in Legal and Court Expenses is due to the increasing cost of cases that are becoming more complex in their nature.

Senator Gibson asked Mr. Baker to give a breakdown of how the State Industrial Attorney's Office is split.

Mr. Baker replied that they employ two fulltime attorneys in Las Vegas who spend 100% of their time working on these industrial injury cases. He also said that he is noticing a significant rise in the number of cases within the Carson City area.

#### Hearings Division

Mr. Howard Barrett, Chief, Budget Division, gave a brief presentation on this budget. He told the Committee that the Legislature created two individual budgets--the Hearings budget and the Appeals budget--and they are now requesting that these budgets be combined. He told them that there is a request for an additional appeals officer and one secretarial position in the second year of the biennium.

Senate Committee on Finance  
March 6, 1981

He said that if Senate Bill 191 is passed, it will remedy the restriction in the law stopping them from hiring any additional personnel and will enable them to hire additional appeals officers as the need grows. He told the committee that upon the passage of Senate Bill 191, it would cause the Budget Division to come before the committee again and ask for the appeals officer and the secretarial support staff personnel for the Las Vegas office, which has been receiving the bulk of the caseload increase.

Senator McCorkle noted that according to his observation of the budget document, it would appear that more appeals are made out of the Carson City office than are made out of the Las Vegas office. He asked if this was the result of the difference between the personalities of the hearing officers.

Mr. Jim Salo addressed Senator McCorkle's question and told him that he feels it is because there are two hearing officers in Las Vegas, their opinion is not challenged as readily as the one hearing officer's opinion is in Carson City. He said that the claimants might possibly feel that they have a better chance by appealing to the appeals officer.

Senator McCorkle asked what the cost averages per hearing per claimant.

Mr. Salo replied that the approximate cost is \$50 dollars per hour by the NIC. He told them that you apply this to the Appeals Board, and the cost is roughly \$10 more per hour or \$60 per hour. He said that the average hearing runs anywhere from two to two and a half hours, with some preparation time on the appeals officers' part, and the overall expenditure of man hours is approximately five to eight hours; therefore, the overall cost is \$300.

Senator McCorkle asked for the total cost of the process of filing a claim, having it heard, appealing it and having it heard before the Appeals Board.

Mr. Salo replied that it would be in the neighborhood of \$1,000.

Senator McCorkle suggested that the hearing officers get together and unify their standards of judgment in these cases.

Mr. Salo replied that they customarily exchange decisions on as many cases as possible and they are making a conscious effort to stand as a single front. Mr. Salo did indicate that part of the problem is that many times they are called upon to make subjective decisions on cases where there are so many different factors contributing to a decision.

Senator Gibson asked if there had been any personnel cutbacks in this budget.

Mr. Barrett replied that there had not been any personnel cutbacks. He told the committee that instead of cutting back on positions, there have been positions funded that have remained vacant because they are not needed at the present time.

He went on to explain the Reserve for Growth Account. He said that this is a request for the authority to hire one appeals officer and one secretary for each year of the biennium, depending upon what affect the self-insurance program does to the projected caseload and the complexity of the cases. He said that this would also take into account the cost of building rent for these newly funded positions. He told the committee that they are requesting these positions be available now along with the funding instead of having to return to Interim Finance.

Senate Committee on Finance  
March 6, 1981

Senator McCorkle asked what the Legal and Court Expense category was for.

Mr. Salo replied that this is the expense of discovery, i.e., depositions, investigative expense, reproduction requests and the cost of sequestering experts to testify in medical and accident cases.

Senator Gibson asked if the hearing officers were themselves attorneys.

Mr. Salo replied that they are not licensed attorneys.

Senator Jacobsen asked why there had been no attempt to achieve a 10% budget cut in this particular budget.

Mr. Barrett replied that the increasing caseload had prescribed that there be no reduction made in this budget to meet the demand.

Senator Jacobsen asked if the reorganization of the Appeals Division has proven successful and if they find themselves in better shape since the 1979 Session.

Mr. Sale replied that they are doing much better; that the new process of filing claims has helped to eliminate many of the cases that were coming up for appeal and did not necessarily merit a hearing.

#### Tort Claim

Mr. Barrett gave the presentation for this claim. He told the committee that this claim is for the money awarded by the Federal Government that the State pay the balance due for attorneys' fees incurred by Washoe County Legal Services in the case of Craig vs. Hocker. He told the committee that they are being requested to supply an additional \$68,000 dollars in attorney's fees by the Federal District Court.

Senator Gibson asked what would happen if the committee were not to act upon this request.

Mr. Barrett replied that he did not know, but he assumed that the State is obligated to pay the indebtedness.

Senator Gibson suggested that the committee vote this request down and move to abolish Washoe County Legal Services.

Senator Wilson said that he believes it boils down to the legal question of whether or not the State is required to pay for the outstanding fees; is this a valid legal premise upon which this request is made.

Senator Gibson asked if it is necessary to have a resolution drafted.

Senator Glaser advised him that it should not be done.

Senator Wilson said that in the event they were to choose to ignore the request, the District Court may serve a Writ of Execution upon the State Treasurer demanding the payment be made forthwith. He said that instead of just ignoring this request and running that risk, the committee should ask the Attorney General to testify before them and explain the ramifications of all the problems they may encounter.

Senator Glaser withdrew his motion.

Senator Jacobsen and the rest of the committee agreed with this suggestion made by Senator Wilson.

Senate Committee on Finance  
March 6, 1981

Bill Amendments

SENATE BILL 198

Senator Gibson read the amendment to Senate Bill 198 to the committee.

After the reading of the amendment, Senator McCorkle asked the committee if they felt it would be necessary to more clearly define the term "new service" contained within the amendment. He said that he was worried this might become the subject to interpretation after the bill's passage.

Senator Gibson said that he feels that this would not be open to interpretation since the fundamental import of the bill is to establish a new practice. He asked Senator McCorkle what he had in mind when he was preparing the bill for drafting.

Senator McCorkle replied that he had intended to establish a new function whereby the Human Resources Department could contract for cheaper forms of labor and/or services. He said that he thinks that the term "new service" is too broad.

Senator Wilson asked that on page 2, section 4, the committee amend the language on line 1 by deleting the word "copy of reports of progress" to include the words "statistical and financial summaries."

Senator Gibson felt that the bill should be further amended to have the report summaries submitted to the Budget Division with the idea that the reports would remain confidential. He suggested that the bill should be more specific about the financial information contained in the reports.

SENATOR MCCORKLE MOVED THAT SENATE BILL 198 BE AMENDED AND DO PASS.

SENATOR WILSON SECONDED THE MOTION.

THE MOTION WAS CARRIED UNANIMOUSLY.

SENATE BILL 208

Senator Gibson read the bill and the amendment to the committee.

Senator Wilson questioned whether the amendment should read "water rights" or not. He asked if this would include water storage as part of its concept.

Senator Glaser suggested that the language be modified to read "water matters."

Senator McCorkle suggested that the language be modified to read "of water rights or storage."

SENATOR GIBSON MOVED THAT THE LANGUAGE IN SENATE BILL 208 BE AMENDED TO READ "water related matters" AND DO PASS.

SENATOR WILSON SECONDED THE MOTION.

THE MOTION WAS CARRIED UNANIMOUSLY.

Retired Employees Group Insurance

Mr. Barrett explained that this budget account was established last Session by the Legislature. He told the committee that the General Fund disperses \$15 dollars per month for certain retired State

Senate Committee on Finance  
March 6, 1981

employees for group insurance.

SENATOR JACOBSEN MOVED THAT THE BUDGET BE APPROVED.

SENATOR WILSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

#### Silicosis

Mr. Barrett explained that this budget was for the dependents of deceased silicotics and pensioners who are afflicted with the disease. He told the committee that this was established by the Legislature appropriating funds to these NIC benefit recipients. He told them that this was not a request for an increase for all recipients, but an increase of 30%, due to inflation, for silicotics.

Senator Gibson asked if this action required a bill to be drafted. Mr. Barrett replied that it did. Senator Gibson asked if the bill had already been drafted. Mr. Barrett indicated that it had not.

SENATOR JACOBSEN MOVED TO OBTAIN THE AFORE-  
MENTIONED BILL.

SENATOR WILSON SECONDED THE MOTION.

THE MOTION WAS CARRIED UNANIMOUSLY.

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SENATOR WILSON MOVED TO CLOSE THE BUDGET  
AS RECOMMENDED.

SENATOR ECHOLS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

-oOo-

#### Post-retirement increase

Mr. Barrett explained the changes being proposed in this budget account and described the need for an increase in the budget because of the effects of inflation and the high interest rates.

SENATOR MCCORKLE MOVED THAT THE BILL BE DRAFTED TO  
PROVIDE FOR A \$30 DOLLAR PER MONTH INCREASE.

SENATOR JACOBSEN SECONDED THE MOTION.

THE MOTION WAS CARRIED UNANIMOUSLY.

-oOo-

SENATOR JACOBSEN MOVED TO CLOSE THE BUDGET  
AS RECOMMENDED.

SENATOR JACOBSEN SECONDED THE MOTION.

THE MOTION WAS CARRIED UNANIMOUSLY.

#### Carson City Taxes

The committee moved to leave this budget open until the complete tax package is agreed upon.

## Bond Interest and Redemption Fund

Senator Gibson asked if the Capitol Renovation program was under a General Obligation Bond, and if it was within the 1% limitation of the assessed valuation.

Mr. Barrett replied that this project was outside of the 1% limitation because it fell under the preservation of National Resources.

Senator Wilson asked if this provision would include those bonds already authorized but not issued.

Mr. Barrett replied that it would not include those bonds already authorized but not issued. There is only one that could be included in this category and that is a bond for Marlette Lake.

Senator Wilson asked if the bond for the Sports Pavillions in Las Vegas and Reno are a debit against the State's bonding capacity.

Mr. Barrett replied that those bonds are revenue bonds and were not supposed to constitute a debit against the State's bonded indebtedness.

Senator Gibson added that if those bonds are general obligation bonds, then the proposed Sports Pavillion construction project is off as far as he was concerned. He told the committee that he has been informed by the University System that they will not proceed with the project if the bond is ruled as a general obligation bond. He said that the basis for the passage of this project was that the bonds would be revenue bonds.

Senator Wilson asked if the Legislature had already authorized the issuance of the revenue bonds. Mr. Barrett replied that they had.

Senator Wilson summarized the problem by saying that, presently, they have a decision from the District Court, which is valid until reversed by the Supreme Court, which says that the authorization to start the construction of this project is a contingent liability against the State's bonded indebtedness.

Mr. Barrett said the indebtedness amounts to \$56 million dollars.

Senator Wilson asked when the decision would be rendered by the Supreme Court. Mr. Barrett replied that he believes it will be sometime around the end of December.

Senator Gibson said that he would like the committee to consider the option of basing the funding of bond redemption from an ad valorem tax, which would be approximately 2¢ on the dollar. He told the committee that he would feel more at ease with the Constitutional requirement that the government's debts be secured by a levy on the property.

Senator Gibson asked Mr. Barrett where the Interest Income is derived.

Mr. Barrett replied that this is interest and principal income that is the return of the State's investment in the refunding bonds.

Senator Gibson asked if that is a predictable quantity and if they could set the levy for the ad valorem tax upon that.

Mr. Barrett replied that that would be true.

Senate Committee on Finance  
March 6, 1981

General Obligation Bond Commission

Mr. Barrett explained the purpose of this budget. Senator Gibson said that the committee would leave this budget open.

State Agencies Training

Mr. Barrett told the committee that they are recommending an appropriation to the Personnel Division for the training of personnel within all State agencies instead of supplying this money in each State agency's budget under a "Training Budget" category. He told the committee that they will have to secure permission from the Personnel Division to receive this funding for training of their personnel. He added that there are exceptions made for specialized training, particularly in the Mental Health areas, where the money has been left in the budget.

SENATOR GLASER MOVED TO APPROVE THE BUDGET AS RECOMMENDED.

SENATOR MCCORKLE SECONDED THE MOTION.

THE MOTION WAS CARRIED UNANIMOUSLY.

Professional and Vocational Boards

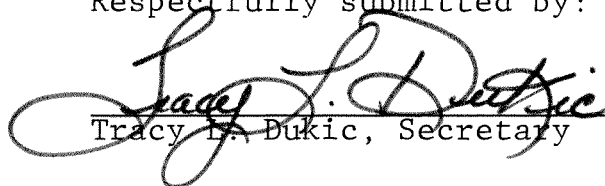
This is merely a report to the committee on the status of these boards.

Governor's Report on Staff Perquisites

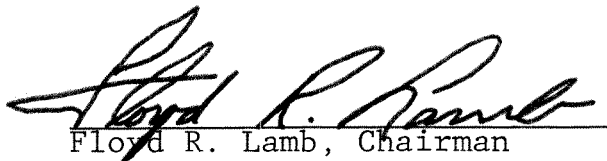
This is merely a report to the committee on the status of the perquisites for staff members. Senator Gibson asked Mr. Barrett if this was the only place where perquisites were contained. Mr. Barrett replied that the department head of each division has his or her perquisites for the staff of that department.

There being no further business, the meeting was adjourned at 9:27 a.m.

Respectfully submitted by:

  
Tracy L. Dukic, Secretary

APPROVED:

  
Floyd R. Lamb, Chairman

DATED: March 12, 1981



SENATE AGENDA

COMMITTEE MEETINGS

Committee on FINANCE, Room 231  
Day FRIDAY, Date March 6, 1981, Time 8:00 a.m.

FRIDAY, MARCH 6, 1981

1. Tort Claim (Howard Barrett - ALL BUDGETS)
2. Bill Amendments
3. Retired Employees Group Insurance (Pg. 115)
4. Silicosis and Disabled Pensions (Pg. 985)
5. Hearings/Appeals Division (Pg. 986)
6. Appeals Officer (Pg. 986)
7. State Industrial Attorney (Pg. 991)
8. Carson City Taxes (Pg. 1025)
9. Bond Interest and Redemption Fund (Pg. 1026)
10. General Obligation Bond Commission (Pg. 1028)
11. State Agencies Training (Pg. 1031)
12. Professional and Vocational Boards (Pg. 1037)
13. Governor's Report on Staff Perquisites (Pg. 1040)



HEARINGS/APPEALS  
COMBINED OPERATING EXPENSE

	Fiscal Year 1979-80 <u>Actual</u>	Fiscal Year 1980-81* <u>Work Program</u>
Operating Expense: Appeals	\$	\$ 69,227
Hearings		32,653
Office Supplies and Expense	3769	
Operating Supplies	2,230	
Communications Expense	16,357	
Print Duplicating Copy	3,669	
Insurance Expense	36	
Contractual Services	162	
Other Contract Services	10,601	
Legal and Court Expense	16,087	
Equipment Repair	780	
State Owned Building Rent	3,707	
Other Building Rent	34,436	
Utilities	87	
Maintenance of Buildings and Grounds	57	
Buildings and Grounds Services	134	
Taxes and Assessment	105	
Other Government Services	1,400	
Dues and Registrations	1,695	
Total	<u>\$95,362</u>	<u>\$101,880</u>

\*3.0 Report, February 27, 1981.

January 27, 1981

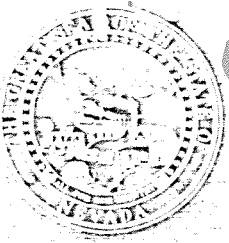
MEMORANDUM

TO: Senate Finance and Assembly Ways and Means Committee  
 FROM: Department of Administration, Hearings/Appeals Division  
 SUBJECT: Hearings Heard

HEARINGS/APPEALS DIVISION				
	HEARINGS		APPEALS	
	<u>Carson City</u>	<u>Las Vegas</u>	<u>Carson City</u>	<u>Las Vegas</u>
1979:				
July	29	113	9	40
August	40	106	34	43
September	40	103	28	32
October	34	105	27	35
November	33	98	26	53
December	43	101	32 (9) **	49
1980:				
January	43	99	14	45
February	24	102	14	31
March	34	105	18 (3) **	33
April	30	101	20 (3) **	48
May	28	95	16 (15)**	63
June	23	105	14 (19)**	64
Total Fiscal	<u>401</u>	<u>1,233</u>	<u>252</u>	<u>536</u>
1980:				
July	69	98	15 (21)**	68
August	37	97	11 (26)**	73
September	47	104	5 (23)**	56
October	31	101	12 (22)**	57
November	58	102	11 (20)**	60
December	33 (26)*	104	14 (4) **	61
Total	<u>275</u>	<u>606</u>	<u>68</u>	<u>375</u>

\*Hearings bracketed were heard by the Carson City Hearing Officer in Las Vegas. This amount is included in the Las Vegas total.

\*\*Hearings bracketed were heard by the Carson City Appeals Officer in Las Vegas. This amount is included in the Las Vegas total.



STATE NEVADA  
DEPARTMENT OF ADMINISTRATION  
CAPITOL COMPLEX  
CARSON CITY, NEVADA 89710

ROBERT LIST  
Governor  
HOWARD E. BARRETT  
Director

February 27, 1981

RECEIVED

MAR 2 - 1981

LEGISLATIVE COUNSEL BUREAU  
FISCAL ANALYSIS DIVISION

MEMORANDUM

TO: Ron Sparks  
Fiscal Analysis, Legislative Counsel Bureau

FROM: Howard E. Barrett, Clerk  
Board of Examiners

SUBJECT: Tort Claim No. 838 - Washoe Legal Services

I have attached a copy of the portion of the Board of Examiners Meeting Minutes of February 26, 1981, pertaining to the above referenced Tort Claim.

Would you please see that it is presented to Senate Finance for their action.

If you should have questions, please call. Thank you.

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Enc.

1003

I. Washoe Legal Services - Claim No. 838 (See also Claim Number's 836 and 837)

The following report has been submitted by Deputy Attorney General Ernest E. Adler:

"Craig v. Hocker is a prison conditions case which began in 1972 and ended in the fall of 1980, after settlement of the plaintiffs' appeal.

"The plaintiffs in this cause were clearly the prevailing parties and as a result are entitled to attorney's fees under 42 U.S.C. Section 1988.

"The Federal Court has reviewed the Affidavits and Claim of Charles Zeh, the Director of Washoe Legal Services, claimed by Washoe Legal Services. (See attached memorandum.)

"Nonetheless, the Federal District Court has ordered the State of Nevada to pay \$68,000 for the work done by Washoe Legal Services at the trial court level, and has recommended to the Ninth Circuit Court of Appeals that the sum of \$9,680 be paid for the work done by Washoe Legal Services on appeal."

Deputy Attorney General's Recommendation:

"NRS 41.036 and 41.037 provides for the administrative settlement of claims against the State of Nevada by the Board of Examiners. However, 41.037 placed a \$50,000 limitation on the Board's power to settle claims. It appears that the Board has neither the power, nor authority to settle this claim since it exceeds \$50,000.

"Although this claim cannot be paid from the reserve for statutory contingency fund, an alternative method for payment of this claim lies in legislative appropriation under NRS 353.235. Therefore, it is recommended that the Board defer action on this claim. Further, it is recommended that this matter be sent to the Legislature for appropriate action."

Motion By: Attorney General Seconded By: Secretary of State Vote: 3

Comments: Motion was to send to Legislature for appropriate action.

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MEMORANDUM

Howard E. Barrett  
Board of Examiners

February 20, 1981

Ernest E. Adler *cit*  
Deputy Attorney General  
Criminal Division

Award of Attorney's Fees in Craig v. Hocker,  
A Case History

This lawsuit began on May 2, 1972, when inmates Robbie Craig and Charles Hayter served a complaint upon Carl Hocker, Edwin Pogue, William Lattin, Robert List and other state and local officials alleging violations of their civil rights under 42 U.S.C. § 1983 and § 1985. Specifically, they alleged the following: (1) Inmates were being denied due process of law in prison disciplinary hearings; (2) Inmates were being placed in punitive segregation for excessive periods of time; (3) Inmates were being denied their constitutional right of access to the courts; (4) Inmates right to communicate by mail with court officials and attorneys was being unconstitutionally restricted; (5) The prison law library was inadequate; (6) The medical care was inadequate; (7) Use of "oriental toilets" and solid steel doors in the punitive segregation cells constituted cruel and unusual punishment; (8) Statutes which provided for commitment of mentally ill persons to state prison for security reasons were unconstitutional in the way they were implemented and administered; (9) If not on their face, the prison policy of confining in institutional lockup inmates under the age of 21 for the mere purpose of providing safety, violated the Eighth Amendment prohibition against cruel and unusual punishment; (10) The Board of Prison Commissioners did not review the basic rules of the prison; (11) The entire state system was in conflict with prohibitions of the Eighth Amendment against cruel and unusual punishment.

On June 15, 1972, Federal District Judge Bruce Thompson appointed Attorneys Charles Zeh, Paul H. Lamboley, William O'Mara and William K. Lohse to represent the plaintiffs. Following the appointment of counsel, a lengthy period of discovery began. This involved inspections by an architectural expert, numerous inspections and interviews by

Howard E. Barrett  
February 20, 1981  
Page Two

psychiatrists concerning the question of whether the prison was psychologically debilitating, inspections of medical manuals and procedures, reviews of all disciplinary rules and regulations by a nationally noted criminologist. This discovery produced some 4,000 pages of legal documents and expert witness reports. Most of this material was generated by the plaintiffs since the state did not invest time or money in outside expert testimony.

From the inception of the lawsuit up to the time of trial Attorney Charles Zeh of Washoe Legal Services spent 1,296 hours in attorney time working on the case. William K. Lohse, a cooperating attorney with the American Civil Liberties Union claimed 300 hours and William O'Mara claimed 205 hours.

The trial began on April 8, 1974, and ended on April 18, 1974, and involved some forty hours of court time. All of the issues which were raised by the complaint were tried. The results of the trial were very unfavorable to the state. The plaintiffs prevailed on most of the major issues raised except for the adequacy of medical care and the issue of whether the prison system as a whole violated the constitutional prohibition against cruel and unusual punishment. In the court's decision, the state was ordered to alleviate many of the conditions at the Nevada State Prison which the court ruled violated the constitutional rights of the prisoners incarcerated therein. *Craig v. Hocker*, 405 F.Supp. 656 (Nev. 1975).

Shortly after the court rendered its decision, the plaintiffs' attorneys made a motion for attorneys' fees. In its order dated May 20, 1975, the court cited the then recent case of *Alyeska Pipeline Company v. Wilderness Society*, 421 U.S. 240, 95 S.Ct. 1612 (1975) for the proposition that attorneys' fees were prohibited absent express authorization by Congress. The issue of fees appeared to be dead until 1976, when the Civil Rights Attorneys Fees Awards Act of 1976 became law. The act declared that in suits under 42 U.S.C. § 1983 and certain other statutes, federal courts may award prevailing parties reasonable attorneys' fees as part of the costs.

The Supreme Court, in *Hutto v. Finney*, 437 U.S. 678 (1978) in interpreting the Attorneys Fees Awards Act, stated that Congress undoubtedly intended to exercise the



Howard E. Barrett  
February 20, 1981  
Page Three

power to authorize fee awards payable by the states when their officials are sued in their official capacity. The act itself, the court reasoned, could not be broader; it applied to any action brought to enforce certain civil rights laws. Further, it stated that the act contained no hint of exception for states defending injunctive actions. Indeed, the act primarily applied, reasoned the court, to laws passed specifically to restrain state action. The court stated emphatically "the state challenged this court's award of cost but we squarely reject the state's claim of immunity." Finally, the court explicitly stated that the act would apply retroactively to any litigation then pending.

Since Craig v. Hocker was at that time on appeal by the plaintiffs, the plaintiffs, in accordance with Hutto v. Finney were entitled to apply retroactively for attorneys' fees, extending back to the time when suit was first filed.

On January 3, 1977, the plaintiffs' attorneys again renewed their motion for attorneys' fees pursuant to the Civil Rights Attorneys Fees Awards Act of 1976. This motion was rejected by the trial court because of the pending appeal. After extensive briefing and procedural maneuvering, on September 9, 1979, oral argument was held on plaintiffs' appeal at the Ninth Circuit in San Francisco. As a result of the State of Nevada's motion at that hearing, the cause was remanded back to the district court for further findings of fact as to whether the issues which were brought up on appeal by plaintiffs had become moot because of the massive improvements which had occurred at Nevada State Prison between 1976 and 1979. Most of these improvements were made possible by sizeable appropriations approved by the 1975, 1977, and 1979 Nevada Legislatures to expand and improve prison conditions in this state, after the 1975 decision in Craig v. Hocker was rendered.

On remand it became apparent to the Attorney General's Office that if a hearing were held on the factual determination of mootness, and the state lost on any issues the state would, pursuant to the Attorneys Fee Act, pay attorneys' fees and costs for such hearing and the appeal. Therefore, a tactical decision was made in October of 1979 to attempt to settle the appeal. After lengthy negotiation, on August 8, 1980, plaintiffs and defendants entered into a

Howard E. Barrett  
February 20, 1981  
Page Four

consent decree which was signed by the Board of Prison Commissioners and the Director of Prisons which settled all remaining issues in the lawsuit.

On September 5, 1980, the plaintiffs once again renewed their motion for attorneys' fees. The total amount of fees claimed by Washoe Legal Services in this regard was about \$200,000, based on an hourly rate of \$90.00 to \$100.00 per hour for the estimated time involved. In addition, Attorney Bill O'Mara requested fees of over \$20,000.00 and Attorney William Lohse requested fees of \$15,000.00. Numerous pre-trial and trial costs, including the costs of the expert witnesses at the trial, and costs of transportation and supplies were also requested in an amount exceeding \$10,000.00. The American Civil Liberties Union made a separate costs claim of \$1,427.31.

The State of Nevada opposed the plaintiffs' motion for attorneys' fees and costs, challenging the form of plaintiffs' motion, contesting the legality of the claim for attorneys' fees in view of the court's order denying such fees on May 21, 1975, and questioning the sufficiency of the claims submitted by plaintiffs' attorneys.

The Court ordered plaintiffs to file a detailed statement of costs, but rejected the state's argument that the claim for attorneys' fees had already been decided adversely to plaintiffs. The Court, for the most part, refused to reduce the total number of hours claimed, since it was obvious that a substantial effort had been made by the plaintiffs' attorneys.

The court did accept the state's argument that the hourly fee rate should be reduced to 1972 - 1975 levels, since that was when the work was performed. Additionally, the fees on appeal were reduced by one-half because the state had begun acting to reform many of the problems outlined in the appeal prior to the Consent Decree being adopted. The court refused to award expert witness fees or costs to the plaintiffs and rejected the A.C.L.U.'s cost claim, because of procedural defects in the filing of these claims.

The total claim of the plaintiffs which ranged as high as \$246,000.00 was reduced by the court to \$105,480.00. The breakdown included twelve thousand eight hundred dollars (\$12,800) to William O. O'Mara, fifteen thousand dollars

Howard E. Barrett  
February 20, 1981  
Page Five

(\$15,000) to William Lohse, and seventy seven thousand six hundred eighty dollars (\$77,680) to Washoe Legal Services.

If broken down by time period this award includes \$95,800 for the period between 1972 when the cause was commenced through February of 1975. From February of 1975 through February of 1977, a total fee award of approximately \$5,000 was given. The remaining \$4,320 was awarded for the time period beginning February 1977 and ending November 18, 1980.

EEA:jb