MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 31, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:05 a.m., Tuesday, March 31, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator William J. Raggio
Senator Jean Ford
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary

The following Bill Drafting Requests were presented and received for committee introduction.

BDR 57-1314 (Trial Lawyers) (SB. 483)

Requires payment of certain insurance claims by negotiable instruments.

BDR 18-829 (Attorney General) (S.B. 482)

Authorizes attorney general to investigate and prosecute crimes of state officials.

BDR C-1774 (Senator Glaser - Judge McDaniel) (S.J.R. 32)

Proposes to amend Nevada constitution to establish staggered terms for district judges.

Senate Committee on Judiciary
March 31, 1981

SENATE BILL NO. 436--Provides variable rate of interest for judgments.

Mr. Bob Heaney of the Nevada Trial Lawyers Association stated the bill was suggested as a means of making judgment interest more in line with today's economic realities. There is a bill over in the assembly, A. B. 68, which came out of the interim study committee chaired by Assemblyman Bob Price which suggests a 12 percent rate of interest. This increases the statutory rate of interest where no other rate of interest is specified from the present 8 percent. It is their feeling that 8 percent is simply totally inadequate in today's world. The prime interest rate has been around 18 percent for over a year, and there is an annual inflation rate of at least 12 percent, or one percent a month presently in the United States. The 12 percent merely locks in judgment interest at a realistic level. The committee may want to give consideration to amending the bill to coincide with A. B. 68 at the 12 percent level, and they would not have objection to that. There has been some concern as to the variable rate of interest, but this can be computed quite easily through a bank on a daily rate or basis. It is not a problem in today's computer world. If the committee does not agree with the variable rate of interest, they would like to go on record in support of the 12 percent level as a minimum. They feel 15 percent would be more realistic.

Mr. Heaney set forth some of the reasons an increase is needed, including economic reality and inflation. They feel increasing the interest rate on judgments is going to encourage just debts, especially in the business community where businessmen enter into transactions where no rate of interest has been specified and litigation ensues. At the 8 percent level the businessman who is a debtor can be using that money and he has little incentive to pay the debt. He can invest the money at a far higher rate of interest than 8 percent. The person knows if he is brought into court, is sued, and a judgment is obtained against him he is not going to pay more than 8 percent on the judgment. They submit that in the business world, this certainly has an impact which they believe would be advantageous in terms of discouraging litigation and encouraging just settlement of debts. They also feel it has an impact at the court level in terms of the numbers of suits that have to be litigated now because there is little incentive to settle at the 8 percent level. Ultimately, it is going to benefit the District Court level because there will be fewer cases that have to be filed and hopefully more cases settled.

Senator Raggio asked whether in a case of absolutely clear liability and the insurance company knows they are going to have to pay on a judgment they will wait until the last day before the trial to settle the case. He asked if that was the purpose of the bill.

Mr. Heaney stated that is one of the considerations he had in mind. He said it has been his experience as a trial lawyer that many cases in larger amounts are not settled until it reaches the courthouse steps. It can be an absolutely clear case of liability and yet there is nothing that mandates the settlement in the law. The only thing there would be is the pressure in terms of economic reality; and when an insurance carrier that is responsible for paying that judgment can be using that money or anybody else that may be responsible for the debt, the only incentive is the interest they are going to have to pay ultimately on that judgment. If it is at 8 percent, there is no incentive to settle. This may also have an effect in terms of appeals. Testimony in the assembly indicated that cases are being appealed that perhaps should not be appealed because the defendant or judgment debtor can use that money during the appeal process for two years.

Senator Raggio stated the legislature recognized some of that and that was the reason the law was changed to give interest from the date of service. Even if the rate was raised to 12 percent it would not help that situation.

Mr. Heaney stated he did not know whether it would completely clear the problem but 12 percent is more in line in today's economic world than 8 percent.

Senator Hernstadt asked whether the testimony is not misleading by saying it only costs a judgment debtor 8 percent to appeal a case because in fact they have to purchase a supersedeas bond, get a letter of credit from a bank first and they charge three percent per year for a letter of credit so there are costs for holding up the payment of the judgment of approximately five percent on top of the eight percent.

Senator Hernstadt said the bill says a rate equal to the average of the lowest daily prime rate and asked what the lowest prime rate would be. Mr. Heaney stated he did not come up with that language but it would probably be the lowest rate prevailing on that particular day among the three largest banks. The precedent for S. B. 436 came from the usury statutes enacted in 1975. The prime rate is the rate the bank charges to its best customer.

Senator Hernstadt asked whether Mr. Heaney would object to making the rate prospective and would apply to a summons served after the effective date of the change, rather than retroactive.

Mr. Heaney stated it would have to be prospective. Regarding lines 12 and 13, the intent of the bill was that the rate would revert back to the time that the complaint and summons were served and the rate would be computed as of that date and it would come forward. There is an exception in the law, however, for any amount that represents future damage and that would draw interest only at the time of entry of judgment. Since it is not clear, that might be another reason for using 12 percent or a set amount.

Chairman Close stated he does see some problem with floating interest rates on judgment because of the difficulty of determining exactly what it is on any given day. He suggested using an agency of the government to determine on January 1 of each year what the treasury bill rate is on that date and that rate then would prevail for the next year. At that point, another interest rate would be set which would be allowed during that 12 month period. It would always have a firm rate set for the year and even though it might be more or less than the prevailing rate, it would average out over a period of time. That would give a firm rate rather than a variable rate.

Mr. Heaney replied that might be a good solution. He pointed out there is one state they are aware of, which is Minnesota, which ties the judgment interest rate to the rate on treasury bills. New York is apparently considering legislation right now that would tie their judgment interest rate to be in parody with the value of money in money markets. There are other states considering a similar kind of approach. There are 17 states that are presently at least 10 or 12 percent and a number of states in this year's legislature are considering increases. Mr. Heaney stated he is not aware of any interest right now that is less than 12 percent. Since A. B. 68 is at 12 percent, if the committee is inclined to use a set amount 12 percent would be logical but they would like to see it higher. The situation is entirely different now from it was two years ago when the interest rate was 8 percent.

David Gamble, attorney from Carson City representing the Nevada Trial Lawyers, stated when A. B. 68 passed the Assembly, it was found there was impact upon several other sections of

the statutes, which will need to be changed also if NRS 17.130 is changed. The first one is NRS 37.175, the second is 99.040, the third is 147.220 and the fourth is in the mechanics lien section which is Chapter 108.

Regarding the arguments against A. B. 68, Mr. Gamble stated if there are no judgments, then S. B. 436 has no impact. The only people the bill impacts upon are those who the court system determines owe money to someone else. If the money is determined not to be owing then there is no pre-judgment interest, there is no post-judgment interest and neither this bill nor the old judgment bill has any impact. Another argument that was raised in the assembly was whether it would lessen litigation because there would be less reason not to settle. The issue was brought up that if the rate was raised to 50 percent, every case would settle. The idea is that the defendants, the people that owe the money or that the plaintiffs think owe the money, are being coerced into settlements. Mr. Gamble did not feel the 12 percent rate is anywhere near a coercive rate, in fact, it is barely up into the realm of reality. He stated Senator Close's reference to the treasury bill method of setting the interest rate once a year is in use in Minnesota. As he understands it, judgments are figured when they are entered based upon the interest rate for each year in the past. The pre-judgment interest that was passed last session is still merely a compromise. The money is owed when the individual defaults on the debt or the day the contract is breached or damages incurred, not when his lawyer gets around to filing the lawsuit. There is still a potentially large period of time during which no interest is provided even though the money was owed at that time. Regarding the other costs involved in an appeal which was brought up by Senator Hernstadt, there is a requirement for a supersedeas bond and there is interest paid on that. Other costs of appeal are attorney's fees, reporter costs, transcript costs and several others. It was demonstrated in the assembly through statistical data that on a given sized judgment all of the items could be paid out of the difference the defendant could earn during the appeal period if all he had to pay was 8 percent. He could afford to pay all of the costs involved and still have no good reason not to appeal and have no good reason not to take it to trial, whichever applies.

Mr. Heaney referred to a letter he wrote to Assemblyman Bremner which should answer questions concerning any possible fiscal impact against the state. See Exhibit C attached hereto. The present law limits total recovery against the state and its political subdivisions to $50,000.

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Mr. Darrell Capurro, representing the Nevada Franchised Auto Dealer's Association and the Nevada Motor Transport Association, stated while listening to the testimony he was reminded of Senator Keith Ashworth's definition of "dirty shame".

He stated one of the things that bothers him, and he did not hear it today for what reason he does not know, but the bill is very similar, of course, to what was contained in A. B. 68, what was proposed before that committee that this particular language that is on lines 9, 10 and 11 be inserted. The testimony on the assembly side was with respect to the fact that the court systems were being clogged now because the defendants were, in effect, forcing the issue to become a court action, in other words, where things had been, in effect, settled out of court before filing of an action in the past because of the low interest involved, there was no incentive to try to settle it before it became an actionable issue. He would submit that he thinks the record actually shows just the opposite because when the new language was inserted last session that, in effect, starts the clock running at the time the action is filed, two things were done in his view. Number one, the legislature made it almost imperative on the part of plaintiffs to file an action and then talk later because obviously the interest would start from that point. He thought if there was any increased clogging of the court system with regard to this sort of action, it comes more from the plaintiff's side than it does from the defense side. As was mentioned by Senator Hernstadt, there are a lot of other costs involved in the appeal process. He did not feel that argument was really a good one. If someone had a judgment against him, he was sure defendant's attorney and defendant will look very carefully at the record, at their chances, at whatever grounds there might be for appeal before they are going to, in effect, push that appeal. It is not going to make any difference, in his view, whether it is 8 percent or 20 percent as to whether they appeal cases that either should be or should not be appealed.

Chairman Close stated as an attorney he has been through it and has had many appeals. He has talked to many defendants, not only insurance carriers, and they do consider the interest rate. If the interest rate is 8 percent and they can make 15 percent on their money, they will consider it. That is the real world. Appeals are caused exactly for that reason.

Mr. Capurro said he thought if an attorney does it on that basis or recommends to his client on the basis of he can save money

on the appeal even if he loses that there is cause to turn him in to the state bar because he did not think that was an issue.

Chairman Close stated they look first at the cause, and if the cause of action is meritorious and there is good reason for appeal then the case should be appealed. If someone files an appeal and is going to lose money regardless of whether the appeal is won or lost, he is going to settle the case. If money can be made whether the case is won or lost, he is going to appeal it presuming the attorney that is dealing with the client is ethical and does not appeal on a frivolous basis. If he does, he is subject to all kinds of sanctions. Chairman Close stated he was not suggesting that the attorney appeal on frivolous cases but it is something to consider before a decision is made.

Mr. Capurro stated it is not one element that would be looked at but the merits of the appeal should be looked at first. If the appeal would have no merit at all, he felt there is a cause if the defendant's attorney went forward with it that he should be brought before the state bar. He felt it should be pointed out that not all lawsuits are filed against people who are involved with insurance companies. Particularly in this day and age where many people go bare because of the cost of insurance, because of any number of factors that the inflationary problems have caused.

Chairman Close asked Mr. Capurro whether he felt the person that is harmed should be forced to suffer the depreciateion in the value of his money and should the person who caused the harm be required to make the person as whole as possible depending upon the judgment.

Mr. Capurro stated he is having no problem with, where there is a judgment rendered, making the person whole. What he is saying is what do you do with the individual who is earning 5-1/4 percent or 10 percent on certain time certificates that are three months long who now is going to have to pay a judgment based upon a variable rate or 12 percent or whatever percentage, which is in excess of what he is getting with respect to his own investment. The problem is that there are many lawsuits and there is talk about the possibility of 12 percent or 15 percent as suggested by plaintiff's bar for judgment interest wherein the individual who is being sued quite possibly may not be able to get that sort of interest return on his money. In other words, he does not have the assets that would allow him to invest in liquid asset accounts or other things that earn 15 to 16 percent.

Mr. Capurro asked what you do with the individual who has judgment found against him.

Senator Raggio stated that is between the two people, the perpetrator and the one that gets the judgment, who should bear that loss.

Mr. Capurro said to relate it to another thing that was done last session. A bill was passed last session that in effect, and he referred to it as the "deep pocket" bill, A. B. 333, which in effect said that if he was five percent responsible, he could end up paying the entire judgment where there are multiple defendants. He would be saddled with the entire judgment, plus the interest at whatever rate that was talked about. He asked if that was fair also. He thought not. He felt some session it would come up again. The point is, and the thing that really sticks in his craw is the element of pre-judgment interest. He felt once judgment is rendered, the system has worked and is said you are innocent until proven guilty and are at that point guilty and owe that money.

Senator Raggio stated it is not a question of guilt or innocence because it is not a criminal case. Mr. Capurro stated he felt the same principal was involved. Senator Raggio stated it is not. There is a question of civil liability and not the guilt or innocence of a crime. The same presumption does not apply in that sense. Senator Raggio asked if the legislature had not gone a long way by limiting it to the time the action is filed. Some states carry interest back to the date of the occurrence. Mr. Capurro stated he is not aware of any state that does that. There are very few states that have pre-judgment interest either, but he did not know the number.

Chairman Close stated pre-judgment interest does not apply to this bill. Mr. Capurro stated the rate of interest would apply, in effect, to pre-judgment interest also. It would apply back to the point that the action was filed so it does effect the entire spectrum. Chairman Close explained that pre-judgment interest is usually defined as being interest which would accrue prior to the filing of the judgment. If one of the motor transports hit a cow and negotiations went on for a year to make the settlement and was not successful so suit is filed, that period of one year is what is normally referred to as pre-judgment interest. The interest that is referred to in the bill is interest from the time of judgment. There are two separate distinct periods of law that have to be dealt with.

Mr. Capurro stated it is at the time of judgment but it goes back to the time of the filing of the action.

Chairman Close asked what interest rate applies from the time of the incident to the time of filing the complaint if there is pre-judgment interest.

Mr. Heaney replied there is no judgment and there is no interest between the time of the cause of action and the time the complaint is filed and served. The interest does not begin to run until the complaint is served and filed. It does not relate back. There are some states that do relate it back to the date of the cause of action but Nevada does not.

Senator Raggio stated that was his understanding but he was told he was wrong. Mr. Capurro stated he said he was not sure. Mr. Heaney stated there are 17 states which allow pre-judgment interest. Senator Raggio stated he resents any witness coming into the committee and giving incorrect information. Mr. Capurro repeated that the record will show what he said was that he was not aware of any states. Senator Raggio stated he said there were none. The committee relies on lobbyists to come in to provide information. He said he has no position necessarily on the bill but does not appreciate anyone giving him false information and somebody is wrong.

Chairman Close repeated his previous question regarding what interest rate applies from the date of the occurrence to the date of filing the complaint.

Mr. Heaney stated pre-judgment or judgment interest applies only in the case where there is no rate specified.

Mr. Capurro stated that not everyone can get 15 or 16 percent interest and, therefore, it is not fair to be saddled with 12 percent or something less than 12 percent that a large body of people are able to take advantage of those kinds of investment opportunities. It is not a situation that you are always going to be dealing with insurance companies which affect the premiums of everyone or always dealing with governmental agencies or entitities or other situations. There are many cases which involve individuals who are willing to recognize their liability, who may have been willing to recognize their liability without action having been filed. It was decided in the assembly that it be consistent with what was provided for in the legislative interim committee and not beyond.

Senator Keith Ashworth stated he agreed with Mr. Capurro in part. He asked whether he agreed that the interest should be someplace

at an amount that would make the plaintiff in the action willing to settle quicker and yet not to be in a position to where that person is getting the investment as if he were a millionaire or had his money in a money market certificate someplace on a short range, high interest rate but yet higher than 8 and lower than the maximum that could be gotten when the attorney or accountant puts the pencil to the case and finds it will cost more than what would be made by settling the case. He agreed the plaintiff should not be put in the highest economic end of the situation as a bank's favored customer would be on the interest rate average of three major banks. He felt something should be done to stop the appeals and stop the delays on making judgments. A rate should be established someplace between 8 percent and what the prime interest rate is at a given time. He asked Mr. Capurro if he would be happy with 12 percent.

Mr. Capurro stated they agreed with the 12 percent before the assembly committee but, again, that philosophical pre-judgment interest or whatever it is called applies from the time the action is filed. He stated he understands that is not part of what is being heard, but he could well live with 12 percent from the time of judgment forward; and he certainly felt that is a reasonable situation under today's inflationary times.

Senator Hernstadt asked whether Mr. Capurro had any indication that all of the contested matters after they go to judgment are automatically appealed. He asked what percent of judgments in which there has not been a voluntary settlement are appealed to the Supreme Court.

Mr. Capurro stated it was probably low but he would have no direct knowledge of that. The implication before the assembly committee was there are a large number that are appealed because of this situation.

Mr. Virgil Anderson, appearing on behalf of AAA, stated he agreed with Mr. Capurro that there is an element of pre-judgment interest in the bill. The rate that is specified would apply from the filing of the summons and complaint. Senator Raggio stated they are aware of that but it is not a bill dealing with pre-judgment interest. It is a bill to raise the amount of interest. Mr. Anderson agreed it increases the rate of interest from eight percent to the prime rate under the bill. He said he asked his company to give him their track record both prior to 1979 when interest was allowed from filing of summons and complaint and afterwards. As an auto insuror, they have about 47,000 insured

vehicles in the state of Nevada, which is about 11 percent of the market. He did not have the exact figures with him, but in 1978 the number of suits they had filed and they defended was approximately 40. In 1980 there was a 50 percent jump to about 60. There is some implication there that the allowing of pre-judgment interest did have an effect on the number of lawsuits which were filed. In 1978 they had three cases go to trial, in 1980 they had four cases go to trial, in 1978 they filed no appeals and in 1980 they filed no appeals. They feel the increase in interest rates will further put a premium on filing suit and will reflect to the cost of insurance for the automobile owner.

Senator Hernstadt asked where the figures come from that everyone is filing appeals to make the spread between the eight percent and present rates.

Chairman Close stated it shows the people who are appealing judgments from civil court decisions are not involved in automobile accidents.

Senator Raggio stated he felt the bigger issue was the length of time between the filing of the action and the settlement of the action and the amount of time between the settlement and the trial date. As he understands the situation, if someone is faced with a million dollar judgment or verdict and he knows he will have to settle for a million dollars, he will wait a year before settling and settle just before trial because the million dollars can be earning 15 or 17 percent.

Mr. Anderson stated there is an incentive for the plaintiff's attorney to wait too because his contingency fee includes that interest that is running from the time of filing of summons and complaint. Senator Raggio replied he could get a contingency fee and put it out at 17 percent so why would he want to leave it there to collect at 8 percent.

Mr. Mitch Cobeaga, with the firm of Beckley, Singleton, DeLanoy & Jemison in Las Vegas and a member of the Nevada Federation of Defense Counsel, stated he would like to address several of the questions raised on S. B. 436. Regarding the effect of pre-judgment interest on the counties, he stated their firm did have some involvement in the MGM matter, working with the county attorneys. The verdict was slightly over one million dollars, and the court determined that the pre-judgment interest would run from 1973 which was the date of the filing of the action at a figure of seven percent. The interest on the judgment was

slightly in excess of $600,000. The five year statute was waived and it was mistried once. It was filed in 1973 and tried in October of November of 1980, a little over seven years from the filing. Many of the condemnation cases run a substantial period of time and are the most drawn-out cases. Mr. Cobeaga stated he is involved in a case filed against the county in which the plaintiff is seeking two million four hundred thousand dollars and they are also asking for pre-judgment interest. There are some substantial sums sought against county governments in the various types of cases. Regarding the eight percent interest and the fact that the plaintiff is not getting his money, he stated it has been found that inflation is built into judgment and inflation is built into settlements. They are settling the same type cases for more today than three years ago. The jury trends show the size of jury verdicts increase with the passage of time, thus, there is some built-in protection. Regarding the settlement time that Senator Raggio asked about, in representing numerous insurance companies they are getting pressure as defense counsel to settle the cases as early as possible and preferably before there is any extensive discovery conducted because they have found their cost of defense far outweighs any benefits. In their practice, they do not see people sitting on a large amount of money instead of settling cases.

Senator Raggio said if they are not delaying settlements then raising the interest is not going to have much impact either way.

Mr. Cobeaga stated there would be an impact on cases such as the MGM lawsuits which may continue for years. Judge Foley would apply the Nevada statute when computing interest on those cases. He felt one thing the committee might consider is that in looking at the distinction between liquidated and non-liquidated damages, if there is a contract action and there is a fixed interest rate it is pretty well taken care of or anything involving fixed damages then some pre-judgment interest should be tied to that. The inflation end of the judgment pretty well takes care of the other problem but if there is a feeling that there is delay, he felt the pre-judgment interest or a higher rate such as relating it to the prime should be made discretionary, such as in Rule 68 of the Nevada Rules of Civil Procedure. There, if the court determines that a party has not acted in good faith in settling has the option of assessing costs and attorney's fees against the party who loses. The same thing could be done with S. B. 436 by throwing in a discretionary aspect with the higher interest rate or any pre-judgment interest and eliminate much of the problem of the party who is not willing to settle in what would be a considered a proper time.

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Senator Raggio asked whether it would be an offer of judgment type of situation. Mr. Cobeaga replied it would not necessarily have to be an offer of judgment. It could be discretionary on pre-judgment interest to the prevailing party, and that could go either way depending upon the nature of the action.

Mr. Keith Ashworth suggested maybe as a compromise the committee could consider starting out with a lower interest rate and adding an accelerated amount as the case proceeds up to a point of judgment and then changing it again for the appeal. The committee is getting testimony from one side that the defense would hold up paying and appeal for the benefit of a higher interest rate but then on the other side, it is argued that does not happen and there is encouragement to get cases settled as soon as possible.

Mr. Cobeaga stated that could be covered under the discretionary aspect to look at what the cause of the delay is. Often times, there is no remedy that either the suing party or the party being sued can come up with because of court congestion which is not the fault of either party. He felt it would be difficult to have varying rates for different years because the cause of the delay would have to be considered. If the reason is over-congested courts, there should not be a penalty factor built in. If it is deliberate delay on the part of the defendant then there could be a provision for some penalty such as in Rule 68.

Senator Hernstadt asked what percentage of the cases that are handled in Mr. Cobeaga's office are appealed since there have been implications that cases are appealed just because of the interest rate spread. Mr. Cobeaga stated in the cases he has handled personally, less than 20 percent of them have been appealed. His office appeals approximately 25 percent of the cases where judgment has been rendered against their clients.

Mr. George Vargas, attorney and lobbyist for the American Insurance Association, stated that the theory of a judgment is to make a person whole at the time the judgment is entered. In connection with that theory, the common practice was to put in an instruction on inflation that the jury may take into consideration the inflation of the dollar. Those two things take care of making the plaintiff whole, therefore, there is not too much credence in the contention there should be high interest to make a plaintiff whole. Regarding filing appeals to make money, Mr. Vargas stated that the appeals in his office are less than 20 percent and in his years of practice as counsel for various insurance companies and various types of business, he has never considered taking or not taking an appeal on the grounds that

if the appeal is taken, the client might make some money by an investment on the side. An appeal is taken if there is a reasonable probability that the client is right. He challenged the statement that appeals are taken by insurance companies for the purpose of making money. If that were true, the Supreme Court would either have to let the case sit there forever or it had to dismiss it as a frivolous appeal. He only knew of two in the past five years and neither one was an insurance case. The argument has been made that the increased interest will encourage the businessman to pay his debts. Any businessman who will not pay his debts will not be in business long because his credit rating is very valuable. The statement was made that if there is no judgment, there is no impact. Mr. Vargas disagreed with that statement. If an individual is sued and wants to get a loan from a bank, he has to show that as a contingent liability. A failure to give that information may be a federal felony under the U.S. Code, Section 1008. Another point is that all of the interest rates tend to exaggerate the 30 to 40 percent contingent fees that plaintiff's attorneys get. He suggested it might be a good idea to put in a provision that upon determination of judgment, the court should determine what the contingent fee is and then apply the interest to the amount of money which the plaintiff is going to realize but not give the attorney interest on the judgment.

Chairman Close asked whether Mr. Vargas thought the interest rate should be increased. He replied that it could be increased, but it should be a fixed rate and not a floating rate. A rate of 10 percent would be reasonable and fair.

Ms. Carol Vilardo, representing citizens for private enterprise, stated she would register oppostion to the bill on the variable rates. They feel it would be an impossibility to deal with, particularly as addressed in the bill.

Mr. Richard Garrod, Farmers Insurance Group, stated their average income of investments for Farmers Group is less than seven percent. He said life companies loan money but fire and casualty companies which are the ones that pay the awards do not. They are prohibited by law from loaning money. They can invest in certain specified investments under the laws of the state in which they are organized and are the bond market for the public school districts, hospitals and things like that. He stated they have no incentive at all to delay payment of judgments. Every claim is reviewed every 30 days. He stated on behalf of the Farmers group which insures approximately 35 percent of the automobiles in the state of Nevada that eight percent interest for judgments is more than enough.

Their Reno claims office said they did not appeal any cases in 1980. Indications are they have not appealed more than five cases in the last 18 months.

SENATE BILL NO. 437--Broadens definitions or increases penalties for certain crimes and amends miscellaneous criminal laws.

Bruce Laxalt from the Washoe County District Attorney's office stated S. B. 437 is an omnibus bill which proposes seven changes to various parts of the criminal code in the state of Nevada. He said he would address four of the issues.

With respect to Section 1 which is a proposed amendment to NRS 195.030 dealing with those persons under Nevada law who are parties to crimes, S. B. 437 would amend that part of the section which deals what is known as accessories after the fact. If an individual under Nevada law aids, counsels or harbors in the commission of an act, he is a principal and may be punished for the full crime. He does not himself have to participate in the crime or the planning of the crime. As the law presently reads, there is an exemption which exempts from prosecution as an accessory members of the family of the fugitive. There is no exemption for family members under California law, neither is there under federal law. Mr. Laxalt stated they would propose the deletion of the family exemption in the statute in order to bring it into compliance with the California statute and federal statute. The situation of a mother would be handled by the excercise of discretion by the prosecutor. The exemption would be very useful, however, in the situation dealing with members of the same family who are bad people.

Mr. Laxalt stated Section 2 is only a cosmetic amendment, except for lines 21 and 22 on page 1. He said they did not sponsor that part of the bill and would prefer to have someone else address the issue.

With respect to Section 3, Mr. Laxalt stated as the law now stands solicitation to commit the crimes of murder, kidnaping or arson is a gross misdemeanor. The amendment would expand the solicitation offense to any felony. He proposed an amendment to the S. B. 437 asking that solicitation to commit the crime of murder, kidnaping or arson be a felony and that a solicitation to commit any other felony should be a gross misdemeanor. He suggested adding the word "maliciously" after the words "each person who..." They then would be able to preclude the possibility of a prosecution for what may only be a gest. He explained that with conspiracy there has to be an overt act leading toward the commission of a felony. Solicitation is a pre-conspiracy stage or a pre-overt act stage and can be a

one-man crime.

Senator Raggio asked whether it would not make more sense to conform it to the conspiracy section, that is, those crimes for which conspiracy would be a felony and solicitation for those same crimes would be a felony.

Mr. Laxalt stated he would have no objection to having it handled in that manner.

With respect to Sections 4 and 5, Mr. Laxalt explained both sections deal with eligibility for parole after conviction of sexual assault and robbery. He felt if the eligibility was raised on a straight sexual assault up to 10 years, there is no difference and the aggravating factors as they exist in the statute are rendered null and void.

Senator Wagner asked whether they would have a harder time getting a conviction if they raised the eligibility to 10 years.

Mr. Laxalt explained that as it works now, the jury is not aware of the penalty itself. On a sexual assault with bodily harm, after a conviction on the charge is reached the penalty is determined by the jury. It should have no effect on convictions.

Regarding Section 7, Mr. Laxalt explained the amendments increase the penalty for burglary if it is established that it is a burglary of a dwelling place of an individual. This basically creates different degrees of burglary without calling them such. The penalty for a normal burglary is 10 years as opposed to 2 to 20 and it is not probatable. He feels burglary is almost a crime against a person, especially against the psychological well-being of the person who lives in a dwelling place. He felt the added penalty would serve as a deterrent to burglars and will also serve as a practical deterrent by keeping him off the street for awhile if convicted.

Mr. Richard Siegal, Vice President of the American Civil Liberties Union, stated the conflicts in penalties tend to blur different types of crimes into each other, especially where there is the same penalty for a much more significant version of the crime. They support punishment that meets the crime and would like to see the law as consistent as possible. He does not feel criminal law can be made the way S. B. No. 437 tends to make criminal law. He suggested if there was going to be a significant change in penalties, there should be an interim study of all criminal penalties. The interim study during the last session was a very

technical job. They did not want any imput on substantive issues and all that was being involved was relative technical aspects of the penalty law. The criminal justice system has to be looked at as each thing relates to another. Unless the effect on the crime above and below is considered, it would be making a significant mistake to merely change one penalty. He agreed that the rape penalty had been carefully considered in recent sessions and the testimony was that when the penalties are increased there is a tendency to reduce the rate of convictions. The major concern is with sure and speedy convictions, not the length of time the individual is put away. Mr. Siegal stated he would like to see some consistency in the legislature in terms of looking at criminal penalties in relation to the problem of prison population, especially penalties that would have a substantial affect on prison population.

Chairman Close stated testimony on the remaining bills would be continued at 8:30 on Wednesday, April 1.

There being no further business, the meeting was adjourned at 11:00 a.m.

Respectfully submitted by:

Iris B. Parraguirre

Iris B. Parraguirre, Secretary

APPROVED BY:

M. C. Close Jr.

Senator Melvin D. Close, Jr., Chairman

DATED: 4-3-81

EXHIBIT A

SENATE AGENDA

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day MONDAY, Date March 30, 1981, Time 9:00 a.m.

S. B. NO. 416--Specifically allows employment of prisoners on public works projects.

S. B. NO. 432--Increases number and allowances of costs for expert witnesses.

S. B. NO. 435--Expands duty of agencies of criminal justice to disclose records of criminal history to certain persons.

TUESDAY, March 31, 1981, 9:00 a.m.

S. B. NO. 436--Provides variable rate of interest for judgments.

S. B. NO. 437--Broadens definitions or increases penalties for certain crimes and amends miscellaneous criminal laws.

S. B. NO. 438--Amends provisions relating to corporations.

S. B. NO. 439--Removes restriction on renewal of reservation of name for corporation.

WEDNESDAY, April 1, 1981, 9:00 a.m.

S. B. No. 415--Expands definition of "condominium" to cover mobile home parks.

S. B. NO. 429--Regulates sale of time-share estate and time-share licenses.

A. B. NO. 205--Fills gap and makes technical corrections in statute on registration of convicts.

A. B. NO. 232--Clarifies age of and eliminates citizenship requirement for directors of corporation.

THURSDAY, April 2, 1981, 9:00 a.m.

S. B. NO. 440--Changes monetary amount for jurisdiction of courts and conforms certain statutory provisions to constitutional provisions relating to jurisdiction.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

EXHIBIT B

DATE: 3-31-81

PLEASE PRINT	PLEASE PRINT	PLEASE PRINT	PLEASE PRINT
NAME	ORGANIZATION & ADDRESS		TELEPHONE
STEVE ROBINSON	DEPT of PRISONS		885-5040
JIM GIBBS	DMV		
Richard Siegel	ACLU of Nevada		322-1916
DAVE GAMBLE	Nev Trial Lawyers Assoc		883-5200
WD Swackhamer	Sec of State		885-5203
Bruce Laxalt	Washoe County Dist. Atty.		785-4540
Bob Hearney	Nevada Trial Lawyers Assoc		786-1020
CHUCK KING	CENTEL		383-5501
A A CAMPOS	Carson-Douglas		5040
[illegible]	WE-SO		451-3316
[illegible]			[illegible]

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EXHIBIT C

NEVADA TRIAL LAWYERS ASSOCIATION

502 N. Division, Carson City, Nevada 89701 • Phone (702) 883-3577

March 23, 1981

Chairman Roger Bremner
Assembly Ways & Means Committee
Nevada Legislature
Carson City, NV 89710

RE: AB 68 JUDGMENT INTEREST BILL

Dear Chairman Bremner:

We understand the Judgment Interest Bill has found its way to your Committee for review. I am perplexed by this, inasmuch as the fiscal note on the bill clearly indicates "no fiscal impact" to either state or local government. In my judgment, this assessment is entirely correct. In fact, if anything, the increased judgment interest rate should work to benefit state and local government for the following reasons:

1. Higher judgment interest will be an inducement for settlement of cases that now are more likely to go to court. This will in turn reduce caseload burdening the courts and help to slow down demand for more judges and court personnel to administer the judicial system.

2. Higher judgment interest will help discourage the ever-increasing number of appeals from the District Court level to our State Supreme Court. As matters now stand, a losing party, often represented by an insurance carrier, is much more likely to take an appeal rather than pay out money that can be earning much higher interest than 8%. Fewer appeals means a more manageable caseload for an already over-burdened Supreme Court and allows more time before court expansion or creation of an Intermediate Court of Appeals.

3. State and local government are just as often plaintiffs, as defendants, in litigation. Higher judgment interest will directly benefit government in such cases. Moreover, where the state or local governments are defendants and lose, those judgments are normally promptly paid and any increase in judgment interest would be very slight. At the same time, it should be underscored, that present law not only limits total recovery against the State and its political subdivisions to $50,000, but further limits payment of interest from the date of judgment; i.e., no prejudgment interest.

1181

Presently, at least twenty other states have judgment interest of 10-12% and more are in the process of increasing the rate. For these reasons, and just plain common sense in recognizing 8% is totally unrealistic with the prime rate hovering at 18%, we respectfully urge that AB 68 be passed out of your Committee for vote on its merits on the Assembly floor. Thank you for your consideration.

Sincerely yours,

ROBERT E. HEANEY
President
NEVADA TRIAL LAWYERS ASSOCIATION

REH/bm
cc: Ways & Means Committee Members
Board of Governors, Nevada Trial Lawyers Association