

SENATE COMMITTEE ON JUDICIARY

January 27, 2005
1:00 p.m.

Hearing Room 343
Tapes 9 - 10

Corrected 10/26/05

MEMBERS PRESENT: Sen. Ginny Burdick, Chair
Sen. Charles Starr, Vice-Chair
Sen. Roger Beyer
Sen. Floyd Prozanski
Sen. Doug Whitsett

MEMBER EXCUSED: Sen. Charlie Ringo
Sen. Vicki Walker

STAFF PRESENT: Joe O'Leary, Counsel
Dale Penn, Committee Assistant

MEASURES/ISSUES HEARD & WITNESSES:

Statutory Interpretation – the rules the courts follow in determining what a statute means.

The Honorable David Brewer, Chief Judge, Oregon Court of Appeals

The Honorable Jack Landau, Judge, Oregon Court of Appeals

The Honorable Virginia Linder, Judge, Oregon Court of Appeals

Overview of Oregon's Tort Law

David Heynderickx, Acting Legislative Counsel

Measure Introduction

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 9, A		
005	Chair Burdick	Calls the sub-meeting to order at 1:13 p.m., and will call the full committee to order when a quorum exists. Makes announcements relating to on the road meeting Friday 28, 2005 at 8:30 a.m. Discusses the Department of Corrections (DOC) tour on Friday 4, 2005. Talks about Court of Appeals visit February 10, 2005.
<u>STATUTORY INTERPRETATION – INFORMATIONAL MEETING</u>		
068	Honorable David Brewer	Chief Judge, Oregon Court of Appeals. Introduces EXHIBITS A & B . Begins discussion on constructing statutes.
072	Chair Burdick	Calls full committee meeting to order.
078	Judge Brewer	Introduces other speakers today. Gives their backgrounds and how they can assist the legislature.
101	Honorable Jack Landau	Judge, Oregon Court of Appeals. Talks about what he will address today. Discusses the law, the courts, and the rules involved with the decisions they make.
130	Judge Landau	Discusses the Court of Appeals, and what they consist of, and what cases they deal with. Explains that they follow the law and

		interpret the decisions of lower courts. Discusses the federal constitution and recent Supreme Court decisions.
176	Judge Landau	Talks about the differences between state laws and federal laws, and how the courts go about interpreting each. Discusses how the constitution limits the power of the legislature.
211	Chair Burdick	Asks about the strength of Oregon's constitution in relation to the federal constitution.
216	Judge Landau	Replies that with Oregon in the late 1970s we recognized the independent significance of the state's constitution. Discusses certain examples with Oregon's constitution. States that we can never grant less protection than the federal constitution, still the supreme law of the land.
238	Judge Brewer	Discusses that some cases will be brought up against all avenues; federal and state constitutions, as well as statutes.
248	Judge Landau	Explains their tenets of interpreting statutes first, and using the federal constitution only as a last resort.
262	Chair Burdick	Asks about the term, "relief."
268	Judge Landau	Replies that "relief" is what the plaintiff wants from the courts or the defendant.
286	Judge Landau	Reiterates the courts purpose is the interpretation of law, while the legislature sets law. Discusses the Court of Appeals and their case load as being fairly straightforward.
340	Judge Landau	Discusses Exhibit A , the general rules they use to decide cases. Describes again the checks and balances between the two branches of the courts and the legislature.
377	Judge Virginia Linder	Judge, Oregon Court of Appeals. Gives modern history of Oregon statutes and the General Rules from Chapter 174 of page 1 of EXHIBIT A . Explains legislative history and its purpose in forming statutes.
435	Judge Linder	Discusses Portland General Electric template that determined a methodology of interpretation for court decisions. Talks about how this allows for the debate and scrutiny of court opinions and decisions.
474	Judge Landau	Explains the differentiation of the rules into generalized steps, showing how the legislature and courts interact.
TAPE 10, A		
033	Judge Landau	Indicates the steps involved with statute interpretation relating to the PGE template. Talks about how the legislature and the courts interact in this method.
057	Judge Brewer	Asks if the courts don't find an answer among these statutes, do the courts then make up the decision?
062	Judge Landau	Replies no, goes on to discuss Exhibit A and its relation to the decisions the courts have to make.
083	Judge Landau	Discusses Exhibit B , concerning an overtime compensation statute. Talks about how the courts and legislature interacted to alter this ORS law.
123	Sen. Beyer	Asks what would have happened if the statute discussed earlier would have been written without any listing of a political subdivision.
130	Judge Brewer	Responds that broad generalizations force interpretation of the rules in the courts. Discusses the importance of listing specifics on a bill.
141	Sen. Beyer	Inquires if a statue specifically authorizes or exempts one thing, but doesn't authorize or exempt something else, by that omission

		is it not allowed?
148	Judge Landau	Replies that in documents of significance, that when a drafter constructs a list that is included in the statutes, then anything not included in that list is left out for a reason.
160	Judge Brewer	Describes common legislative terms and tactics used in certain bills that allow the courts to analyze these situations better.
166	Sen. Beyer	Asks about a recent bill in committee that relates to public bodies discussing certain things together.
176	Judge Brewer	States that there would be circumstances in each situation that would influence the interpretation.
187	Judge Landau	Discusses the importance of context, and how that aspect of the statute also has a large impact on the decisions of the courts. Discusses EXHIBIT B , section 2. Declares they look at Webster's International Dictionary in order to research the words. Cites example of section 3 of EXHIBIT B ; a case relating to Sen. Beyer's question.
269	Sen. Prozanski	Asks about legislative intent.
272	Judge Landau	States that they very much care about legislative intent, and will use that primarily to interpret the law, and case history will play into the decision if the intent is ambiguous.
275	Sen. Prozanski	Wonders about the ambiguity of some instances.
282	Judge Brewer	States that in recent legislature, a bill was passed giving the courts access to legislative history.
315	Judge Landau	Explains that legislative history always plays into a decision. Discusses the crafting of opinions based upon that and other factors. Emphasizes the responsibility of a legislator not to rely on legislative history to influence the courts decision, and to focus on good drafting of a bill to cover all relevant data.
326	Judge Landau	Discusses Section 3 of EXHIBIT B , relating to the interpretation of <i>State vs. Stearns</i> and its relation to legislative history and intent.
362	Chair Burdick	Inquires about a tiered process before looking at legislative history.
365	Judge Landau	Replies yes and no. Discusses the steps a court takes before accessing legislative history, and gives tips on how a legislator can get the court's attention for interpretation. Describes the importance of floor statements by legislators.
419	Sen. Whitsett	Asks about expansion of statutory authority by administrative rule.
430	Judge Landau	Responds that the legislature can create administrative agencies and promulgate rules, but the important fact is that agencies cannot act beyond what the legislature permits them. States that the role of the courts is to make sure that doesn't occur.
482	Judge Landau	Gives examples of how courts can limit the authority of a state agency, as well as how a floor statement can influence a courts decision.
TAPE 9, B		
043	Sen. Beyer	Asks the importance of repeat statements.
056	Judge Landau	Expresses how the repeated statements from both houses is a great suggestion to get a court's attention concerning legislative history.
070	Sen. Prozanski	Inquires if the statements the carrier gives on the floor can be interpreted as intent.
085	Judge Landau	States that a carrier is given a little leeway, and the interpretation

		can be hedged because of that. Expresses that if there is a debate, then the nature of the debate will be taken into consideration heavily.
100	Judge Brewer	Wonders how often the court sees truly conflicting legislative history.
105	Judge Landau	States that there are very few cases of conflicts in the legislative history, and that more often the case is that the issue is something nobody ever thought of at the time. Discusses the final step in interpretation; the assumptions the courts make. Goes on to cite examples.
141	Chair Burdick	Questions if that applies to Supreme Court decisions as well.
142	Judge Brewer	Replies that the Court of Appeals follows the Supreme Court's decisions.
144	Chair Burdick	Asks how the Court of Appeals deals with unclear writing.
150	Judge Landau	Indicates the different materials they use to come to their decision.
164	Chair Burdick	Wonders if campaign materials are used in the interpretation.
166	Judge Landau	Replies usually not.
170	Chair Burdick	Asks if the legislature is the people, not the chief petitioners.
173	Judge Landau	Responds affirmatively. Gives a recap of the steps used by the courts to come to their interpretation.
200	Judge Brewer	Reiterates that the courts realize they are not the legislature, and cannot make law.

TORT LAW – INFORMATIONAL MEETING

231	David Heynderickx	Acting Legislative Counsel. Introduces material on torts (EXHIBITS C – E). Discusses the idea of a tort, intentional and unintentional.
304	Chair Burdick	Asks if criminal and tort are different cases.
307	Heynderickx	Responds that they are two different proceedings; cites O.J. Simpson case as an example of restitution for victims in a civil case as opposed to the criminal case.
330	Heynderickx	Discusses professional negligence against doctors. Notes 1987 tort reform bill with over 125 amendments.
372	Heynderickx	Talks about amendments in tort reform as well as statutory limitations.
399	Heynderickx	Gives an explanation of economic and non-economic damages, including the criteria of “pain and suffering.”
423	Heynderickx	Summarizes issue of negligence and the decisions of the courts.
470	Heynderickx	Explains that much of the punitive damages go to victim assistance.
505	Heynderickx	Talks about attorneys fees in Oregon, and court decisions relating to this.

TAPE 10, B

059	Heynderickx	Describes statute of limitations. Talks about comparative negligence, where there are two or more defendants.
112	Heynderickx	Highlights the Torts Claim Act, and its history in the idea of sovereign immunity.
141	Chair Burdick	Asks if the Torts Claim Act allows physicians to have liability caps at OHSU.
134	Heynderickx	Replies yes, because they have their own insurance agency.
196	Heynderickx	Describes confusion in limiting liability under recent court decisions. Talks about alternative remedies under Torts Claim Act.

INTRODUCTION OF COMMITTEE MEASURES – WORK SESSION

240	Joe O’Leary	Committee Counsel. Reads LC drafts for introduction (EXHIBITS F - I).
250	Vice-Chair Starr	MOTION: Moves LC's 940, 1621, 1622, and 1623: BE INTRODUCED as committee bills. VOTE: 5-0- 2 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 2 – Ringo, Walker
255	Chair Burdick	Hearing no objection, declares the motion CARRIED.
296	Chair Burdick	Adjourns the meeting at 2:55 p.m.

EXHIBIT SUMMARY

- A. **Statutory Construction, Selected Legislative Principles of, Honorable David Brewer, 3 pp**
- B. **Oregon Court Cases, Honorable David Brewer, 3 pp**
- C. **Cases on the Constitutionality of Liability Limitations, David Heynderickx, 2 pp**
- D. **Chapter 31, 2003 Edition, Tort Actions, David Heynderickx, 14 pp**
- E. **Torts 101, David Heynderickx, 2 pp**
- F. **Introduction, LC 940, staff, 8 pp**
- G. **Introduction, LC 1621, staff, 1 p**
- H. **Introduction, LC 1622, staff, 15 pp**
- I. **Introduction, LC 1623, staff, 16 pp**