

SENATE COMMITTEE ON JUDICIARY

February 17, 2005
1:00 P.M.

Hearing Room 343
Tapes 38 - 39

MEMBERS PRESENT: **Sen. Ginny Burdick, Chair**
 Sen. Charles Starr, Vice-Chair
 Sen. Roger Beyer
 Sen. Floyd Prozanski
 Sen. Charlie Ringo
 Sen. Vicki Walker
 Sen. Doug Whitsett

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

MEASURES/ISSUES HEARD:
 Informational Meeting – Oregon's Dispute Resolution System
 SB 337 – Public Hearing
 SB 248 – Public Hearing

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 38, A		
004	Chair Burdick	Opens the subcommittee meeting at 1:13 p.m. and opens an informational meeting.
<u>OREGON'S DISPUTE RESOLUTION SYSTEM – INFORMATIONAL MEETING</u>		
012	Bryan Johnston	Former law professor/dean/legislator. Gives an overview of the informational meeting.
028	Honorable Susan Leeson	Retired, Associate Justice of the Oregon Supreme Court. Discusses the State Court system, and their jurisdiction. Points to the informational packet (EXHIBITS A – C). Gives statistics on court case numbers.
087	Leeson	Explains the organization of the courts in Oregon by talking about Exhibit A . Addresses what types of cases the different area courts face.
105	Leeson	Discusses Exhibit B and the court structure.
124	Leeson	Introduces information on the Federal court system, and points towards Exhibit C .
170	Leeson	Articulates a conflict between current Oregon law and federal law.
206	Johnston	Talks about the dispute resolution system.
220	Johnston	Gives a basic overview of 1970's dispute resolution systems.
263	Johnston	Brings up the idea of litigation and how it fits into the idea of dispute resolution.
319	Johnston	Discusses the 1980's and the new idea of arbitration.
400	Johnston	Talks about mediation, and its use in the system of dispute

		resolution.
451	Johnston	Summarizes the dispute resolution process.
TAPE 39, A		
041	Leeson	Gives an overview of how dispute resolution is used by the court system. Addresses the statistics of the courts and how they deal with the high number of cases.
120	Johnston	States that the legislature sits at the top of a pyramid of control over this entire system.
127	Chair Burdick	Wonders what the main reason is for a case going to trial or litigation.
130	Johnston	Replies that overconfidence in their chances of winning sends many cases to litigation; cites local examples.
141	Sen. Walker	Inquires about the term "overconfidence" and also about our society being very litigious.
151	Johnston	Responds that there are arbitrators and judges advising the claimants about the validity and value of claims, although not all courts use them.
173	Sen. Walker	Raises the issue of why some people see the judicial system as adversarial.
183	Chair Burdick	Praises the witnesses on their presentations and asks about appealing the arbitration process.
191	Leeson	Discusses the appeal methods in the arbitration process.
201	Chair Burdick	Inquires if this process is used in labor disputes.
203	Leeson	Responds that yes, mainly it is in labor disputes, but also details where else this type of resolution process is utilized.
210	Chair Burdick	Desires advice on how the Senate Judiciary Committee can go about their jobs better and more informed.
214	Leeson	Expresses the importance in mediation systems.
247	Chair Burdick	Closes informational meeting and opens a public hearing on SB 337.

SB 337 – PUBLIC HEARING

248	Joe O’Leary	Counsel. Describes SB 337, relating to wrongful sterilization.
263	Bob Joondeph	Director, Oregon Advocacy Center. Testifies in support of SB 337 (EXHIBIT D). Discusses the necessity of passing the bill.
330	Joondeph	Talks about a recent example dealing with accidental sterilization and its relationship with SB 337.
382	Joondeph	Addresses confidentiality records under state laws, and how they served as a template for SB 337.
375	Joondeph	Details the disciplinarian tactics available with the passage of SB 337.
432	Robert J. Castagna	Executive Director, Oregon Catholic Conference. Testifies in support of SB 337. Describes the need for protection for those who cannot protect themselves.
476	Andi Easton	Associate Director, Oregon Medical Association. Reads testimony in opposition to SB 337 (EXHIBIT E).
TAPE 38, B		
040	Easton	Continues reading testimony in opposition to SB 337.
069	Chair Burdick	Introduces testimony from Kathryn Weit and the Oregon Disabilities Commission (EXHIBITS F, G, & L).
080	Kathleen Haley	Executive Director, Board of Medical Examiners (BME). Testifies in a neutral stance on SB 337 (EXHIBIT H). Discusses examples of sterilization where consent was not obtained before surgery.
113	Sen. Walker	Asks how the Board disciplined the doctors in the two examples

discussed earlier.

115 Haley Responds there was no discipline after the investigation was complete.

120 Sen. Walker Inquires as to the results of those cases.

126 Haley Talks about the repercussions of the investigations.

131 Sen. Walker Wonders about the redress available to the victim.

138 Haley Outlines the BME's process of disciplining a physician.

144 Sen. Prozanski Inquires as to the compensation the two claimants received.

147 Haley Responds that she does not have the information, but will get back to the committee.

148 Sen. Prozanski Assumes the information would be available if they had a thorough investigation.

150 Haley Reaffirms that they will get back to the committee.

153 Sen. Prozanski Inquires as to relief given to the claimants, and if the Board will discipline a doctor based on court decisions.

160 Haley States that the Board uses all information to arrive at their decisions.

163 Chair Burdick Wonders about the two cases discussed, and if the doctors in both cases are the same physician.

166 Haley Replies no, they were different people.

169 Chair Burdick Inquires if the history of the physician goes into the response the Board will make.

175 Haley States that there are many different things they look at before sending a response.

185 Chair Burdick Closes the public hearing on SB 337 and opens a public hearing on SB 248.

SB 248 – PUBLIC HEARING

192 Joe O'Leary Counsel. Describes SB 248, relating to the power of the guardian to limit the administration of nutrition and hydration for a protected person.

199 Bob Joondeph Summarizes testimony in support of SB 248 (**EXHIBITS I & J**). Gives a background on the necessity for SB 248.

240 Joondeph Discusses his involvement with a work group that re-wrote the guardian statutes of Oregon.

272 Joondeph Explains why a guardian should be able to make these types of medical decisions and how they could obtain this authority if it was in the protected person's best interest. Brings up the possibility of amendments.

305 Chair Burdick Asks if the judge is a necessity in this decision.

306 Joondeph Responds yes.

311 Tina Kitchin Medical Director, Department of Human Services. Submits testimony in support of SB 248 (**EXHIBIT K**). Clarifies which individuals would fall under the need for guardianship.

349 Chair Burdick Asks if they would support an amendment that Mr. Joondeph mentioned.

352 Kitchin Responds yes.

364 Robert J. Castagna Oregon Catholic Conference. Testifies in support of SB 248 as printed. Declares he has not been able to view any proposed amendment, and cannot give his support for any bill other than the current form.

398 Chair Burdick Closes the public hearing on SB 248.

408 Chair Burdick Adjourns the meeting at 2:35 p.m.

EXHIBIT SUMMARY

- A. **Judicial Districts, Oregon, Susan Leeson, 1 p**
- B. **Court Structure, Susan Leeson, 1 p**
- C. **Courts, U.S., Susan Leeson, 1 p**
- D. **SB 337, written testimony, Bob Joondeph, 3 pp**
- E. **SB 337, written testimony, Andi Easton, 2 pp**
- F. **SB 337, written testimony, Kathryn Weit, 1 p**
- G. **SB 337, written testimony, Danielle Knight, 1 p**
- H. **SB 337, written testimony, Kathleen Haley, 4 pp**
- I. **SB 248, written testimony, Bob Joondeph, 3 pp**
- J. **SB 248, written testimony, Bob Joondeph, 3 pp**
- K. **SB 248, written testimony, Tina Kitchin, 2 pp**
- L. **SB 248, written testimony, Kathryn Weit, 1 p**