

## HOUSE COMMITTEE ON JUDICIARY

February 13, 2003 Hearing Room 357  
1:00 P.M. Tapes 34 - 37

**MEMBERS PRESENT:**        **Rep. Max Williams, Chair**  
                                  **Rep. Robert Ackerman, Vice-Chair**  
                                  **Rep. Gordon Anderson, Vice-Chair**  
                                  **Rep. Jeff Barker**  
                                  **Rep. Bob Jenson**  
                                  **Rep. Jerry Krummel**  
                                  **Rep. Greg Macpherson**  
                                  **Rep. Floyd Prozanski**  
                                  **Rep. Lane Shetterly**

**STAFF PRESENT:**        **Bill Taylor, Counsel**  
                                  **Nancy Masee, Committee Assistant**

**MEASURE/ISSUES HEARD:**        **Informational Meeting**  
  **Oversight Hearing of the Extraordinary Expenses**  
  **Associated with Indigent Defense**

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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.

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<b>TAPE/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>Tape 34, A</b>		
006	Chair Max Williams	Opens meeting at 1:10 p.m. Welcomes audience. Makes opening remarks regarding extraordinary indigent defense costs and submits January 13, 2003 letter to all district attorneys in Oregon ( <b>EXHIBIT A</b> ).
<b><u>INFORMATIONAL MEETING</u></b>		
144	Bill Taylor	Committee Counsel. Describes documents that the committee has for review.
162	Ann Christian	Director, Indigent Defense Services Division. State Court Administrator's Office. Submits testimony and gives overview of the Division's work ( <b>EXHIBIT B</b> ). Gives examples of extraordinary expenses. Describes who authorizes extraordinary expenses in indigent cases.
280	Christian	Continues presentation on expenses. Explains how extraordinary expenses are reviewed and pre-authorized. Explains reviewing the billing when responsibility is assumed.
335	Christian	Explains \$75 million in costs related to indigent cases.
<b>TAPE 35, A</b>		
011	Christian	Continues explaining how decisions are made in spending on indigent defense.
015	Rep. Prozanski	Asks when the authorization took place.
025	Christian	Answers that prior to 1995 the statute did not say authorization. A policy statement required it.
037	Rep. Ackerman	Asks about "open authorization" and if there are any caps on hourly rates?

045	Christian	Responds that the policy statement provides certain rates. The standard questions to ask of an expenditure: is it necessary and is the amount reasonable? With regard to particular case types there are no caps. Multnomah County has some. Policy guidelines determine hourly rates.
075	Gary Williams	District Attorney, Crook County. President, Oregon District Attorneys Association (ODAA). Describes the district attorney's role and submits testimony on indigent defense extraordinary expenses <b>(EXHIBIT C)</b> .
132	Joshua Marquis	District Attorney, Clatsop County. Prosecuting attorney in <i>State v. Jones</i> . Submits testimony and describes the cost issues in that case in Lincoln County <b>(EXHIBIT D)</b> .
250	Michele Longo Eder	Lincoln County Attorney Submits testimony and describes her background in representing clients for the past 24 years <b>(EXHIBIT E)</b> . Describes the <i>Jones</i> case in which she was the defendant Sandra Jones' attorney.
395	Chair Williams	Narrows focus of witnesses to extraordinary costs of indigent defense.
399	Vice Chair Ackerman	Comments on his personal experience in trial court cases. Discusses remedies such as pre-trial conference with the judge to resolve the cases.
431	Eder	Responds she is not informed of present criminal defense practices. However, there is time set for discovery and plea negotiation before pre-trial conference. States some investigations cannot be accomplished that quickly.
<b>TAPE 34, B</b>		
048	Marquis	Supports settlement conferences between the court and attorneys.
058	Rep. Shetterly	Refers to substantial costs mentioned in Eder letter.
066	Marquis	Replies there was great rancor in the case. Relates what happened to Judge Hass.
075	Vice Chair Anderson	Asks if the defense costs can be released.
082	Eder	Replies that information is not revealed until all appeals are concluded.
088	Vice Chair Anderson	Asks about defense and prosecution costs.
090	Eder	Replies that prosecution costs were substantially greater than the defense costs.
110	Marquis	Responds in the Michael Jones case, the indigent defense cost was great.
124	Eder	Comments that the conduct of the prosecutors plays a significant role in costs of indigent defense.
139	Mike Dugan	Deschutes County District Attorney. Describes the 1987 case <i>State v. Guzek</i> .
154	Joshua Marquis	Trial prosecutor in Guzek 2 and 3. Guzek is still under appeal. Discusses costs of psychologists that were called. Describes how a witness was flown from London at a great cost to support the defendant.
211	Duane McCabe	Defense attorney, Bend, Oregon. Submits expenses from the <i>Guzek</i> case <b>(EXHIBIT F)</b> . Describes how death penalty cases are conducted. Describes the needs of the defense side in trial. States there have been three trials on the <i>Guzek</i> case; each case with a different set of attorneys. Describes the witnesses in the case. Death penalty clients usually do not testify. Explains that the witness flown in from London was paid for by the defense because the witness was not used.

310	Rep. Barker	Asks if the check was sent after the newspaper article.
320	McCabe	Replies afterwards.
336	Rep. Krummel	Asks about customary fees for psychologists.
330	McCabe	Answers there is not a customary fee. In indigent cases the expert witness usually charges less.
363	Vice Chair Anderson	Asks if it is normal to have seven different counsels on a case?
368	McCabe	Answers in a re-trial it is customary to have new attorneys.
375	Vice Chair Ackerman	Asks if upon authorization are there caps on an ultimate fee.
384	McCabe	Answers there is a cap on fees. It is based on hourly charge.
402	Marquis	Describes the <i>State v. Harned</i> murder case in Astoria in 2000. States that a social worker visited the teenage Harned 48 times in jail and sat next to him during the trial to settle him down.
439	Rep. Shetterly	Comments how some defendants are very disruptive.
<b>TAPE 35, B</b>		
040	Marquis	Describes how the prosecution does not have unlimited means in these cases and expert witnesses have never cost more than \$2,000 in a case. States that the prosecution is consistently outspent by the defense.
067	Laura Graser	Defense lawyer. Represented Harned who was a mentally disturbed 16-year-old at the time. States that Harned's behavioral problems caused the need for the social workers' presence. Describes Harned's violence in the jail.
135	Joshua Marquis	Prosecutor in <i>State v. Simpkins</i> (1998). Clatsop County DA. Describes Garner and Simpkins in the murder of a woman on a boat. Simpkins was acquitted. The discovery phase can be expensive. An example of expert witness costs are shown by Dr. Cunningham's notes. Describes the boat model built by the defense at a great expense and was not used. Describes witness Mark Nelson, who provided a telephone survey at the cost of \$9,000 for the purpose of changing venue.
315	Marquis	Continues describing the costs of indigent defense in <i>Simpkins</i> . Refers to the "team" of lawyers and investigators and their cost. Refers to the cost of "associates."
341	Peter Fahy	Benton County attorney. Formerly DDA Lincoln County. Was the defense attorney in <i>Simpkins</i> . Explains the boat model that was built at a cost to defense. Submits testimony and <b>(EXHIBIT G)</b> .
<b>TAPE 36, A</b>		
017	Fahy	Continues describing cost of indigent defense in the <i>Simpkins</i> case.
050	Fahy	Describes why the telephone survey was needed. Clatsop County residents' opinions were needed to determine a change of venue. Explains the cost of \$5,000 to have the boat model built and it was not used.
142	Fahy	Describes an expert witness, a criminologist, called in from Seattle and that cost. A forensic scientist was needed in this case.
178	Vice Chair Anderson	Asks if pictures or video of the boat model could have been used in court, instead of the model.
190	Fahy	Answers that the close quarters of the cabin needed to be portrayed by the model and it was felt this could not be done with pictures. The authorization was by Ms. Christian.
208	Rep. Krummel	Asks what is a mitigation specialist.

213	Marquis	Says Mr. Frasier from Coos Bay is not available tomorrow.
228	Chair Williams	Says the <i>Gannon</i> case will be done today since some witnesses are not available tomorrow.
244	Paul Frasier	Chief Deputy District Attorney, Coos County. Prosecutor in the <i>Gannon</i> case. Found out experts were called in by the defense only a week before trial. Explains a “sleep study” which was authorized. Did not use the sleep study which cost \$1,500. There was also a “confession” expert called in. Questions the cost of experts.
321	Christian	(Alan Goldman, attorney for Gannon, is absent.) Christian authorized expenses in this case. Describes the affidavit provided to her supporting the possibility of a sleep disorder in the defendant.
<b>TAPE 37, A</b>		
008	Edmond Caleb	Klamath County DA. Prosecutor <i>State v. Manzo-Hernandez</i> (1992) Hernandez was a drug dealer who was accused of murdering a state policeman. Cost of <i>Hernandez</i> case was \$996,000. The mitigation and aggravation experts cost a total of \$170,000; more extraordinary expenses were for psychological, \$23,000; forensic \$18,000, and other experts which came to \$44,000. Special interpreters were hired, but Hernandez spoke English very well.
052	Duane McCabe	Deschutes County. Indigent Defense Lawyer. Explains the extraordinary expenses incurred by the defense. Testifies Hernandez spoke some English but an interpreter was needed. Describes complicating factors; some witnesses who were involved with police. Describes mitigation experts called. Because the client was a non-citizen; background and family investigation was done out of the area and in Mexico. Intercultural cases must be tried in detail to avoid possible mistrials.
163	Caleb	Explains how the defense costs were affected by Justice Department.
188	Vice Chair Anderson	Asks what ways they suggest in cutting expenses in indigent defense cases.
180	Caleb	Explains Klamath County’s handling of cases. Suggests negotiating a budget with the counties for indigent defense cases other than death penalty.
198	McCabe	Suggests the expenses would not be so high now that the Mexican Consulate has a Portland office and they can now pick up some of the investigations. <i>Hernandez</i> was a unique case.
239	Bill Taylor	Committee Counsel. Asks what the hourly rate was for investigators.
242	McCabe	Answers, probably \$25 an hour at that time.
233	Chair Williams	Thanks participants in the hearing. States that tomorrow the remaining cases will be discussed along with more disclosure on authorization and payment from the state.
288	Chair Williams	Adjourns meeting at 3:45 p.m.

**EXHIBIT SUMMARY**

**A – Informational, letter by Rep. Max Williams, 2 pp**

- B – Informational, written testimony and audit (1995), Ann Christian, 55 pp**
- C – Informational, written testimony, Gary Williams, 1 p**
- D – Informational, written testimony and letters, Joshua Marquis, 21 pp**
- E – Informational, letter from Michele Eder, 4 pp**
- F – Informational, letter and receipt, Duanne McCabe, 3 pp**
- G – Informational, letter from Peter Fahy, 7 pp**