

HOUSE COMMITTEE ON JUDICIARY

February 14, 2003 Hearing Room 357
1:00 P.M. Tapes 38 - 40

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

MEMBER EXCUSED: Rep. Bob Jenson

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

MEASURE/ISSUES HEARD: **Informational Meeting**
 Extraordinary Expenses Associated
 with Indigent Defense

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		
006	Chair Williams	Opens meeting at 1:08 P.M.
<u>INFORMATIONAL MEETING</u>		
225	Ann Christian	Director, Indigent Defense Services Division, Office of the State Court Administrator. Submits Indigent Defense Account Payments Chart and describes differences in opinion on allowing scientific requests (EXHIBIT A) .
	Daniel Norris	Malheur County prosecutor. Describes the <i>McKnight</i> case. Submits testimony and explains the reasons for disallowing DNA testing because of the cost and length of time passed from the crime until reporting of the crime (six months) plus the fact that the clothes had been washed many times during that period (EXHIBITS B & C) .
235	Ann Christian	Explains why she allowed the test at the cost of over \$700.
240	Rep. Prozanski	Asks when this took place.
245	Norris	Answers in 2001. There was a lapse of six months from the time of the rape until it was reported.
247	Vice Chair Anderson	Asks what the DA expenses are; does the defendant have access to all the same information?
302	Christian	Answers the law permits defense attorneys to use the state crime lab.
297	Vice Chair Anderson	Asks if the prosecutor has access to all the information that the defense attorney does.
301	Norris	Answers, no, they do not unless the expert witness is on the list.

306	Vice Chair Ackerman	Asks about the supplemental affidavit, did it show representation of counsel or to the expert witness that it was probable that DNA would show up.
317	Christian	Answers he had spoken with Intermountain Forensic Labs.
329	Rep. Shetterly	Asks about the DNA evidence.
362	Norris	Answers the defendant was convicted of rape and sodomy. It was no longer an alleged crime. Prosecutors want DNA. There was no reasonable chance to obtain the DNA in this case. However, the defense sought DNA at the state's expense.
350	Christian	Explains a request would be for the purpose of reaching a resolution in the case rather than a jury trial. States there were ten charges and he was convicted of three. Negotiated pleas save money compared to jury trials.
397	Rep. Shetterly	Mentions that polygraph examinations save money compared to going to trial.
TAPE 39, A		
010	Christian	Explains that the contract with Intermountain Forensic is \$120 per test. The private labs have hourly rates from \$250 to \$350 per hour. The cost of \$729 in this case included time on the phone with the defense attorney and other services. There were additional reports that cost \$90 per hour under the contract.
040	Steve Dingle	Marion County Prosecutor in <i>Cox</i> case. <i>Cox</i> was convicted of aggravated murder and sentenced to death. He stabbed a fellow inmate at Oregon State Penitentiary. Describes Dr. Cunningham's testimony in the defense. He estimated that his charge would be \$15,000 to \$20,000. The DA's total allowance would be \$8,000 for examination of the defendant. Describes how lack of resources affects handling of testimony.
070	Chair Williams	Asks what the witnesses cost was and why was he testifying.
078	Dingle	Describes Dr. Cunningham's presentations as ineffective.
	Chair Williams	Asks what the objection to the cost was.
090	Dingle	Describes examining defendant, consulting, and testifying costing up to \$4,000. Cunningham got around \$20,000. The majority of his income is from testifying at capital defense cases. His fees run from \$8,000 to \$34,000.
120	Steve Gorham	Criminal Defense attorney since 1976. Indigent defense contractor in Marion County Submits testimony and explains that he authorizes indigent defense extraordinary expenses (EXHIBIT D) . Discusses how he is very careful about expenses. Indigent expense funds are very accountable.
178	Gorham	Refers to the <i>Cox</i> case. Explains access to the state laboratory and what assistance is available to the defense. Explains the importance of having an expert witness. Refers to Judge Dickey's opinion.
224	Chair Williams	Asks Mr. Dingle if he used an expert witness in the penalty phase.
230	Dingle	Answers that the defendant had had a dangerous offender evaluation in earlier years. The expert witness was in Salem and accessible as were the records. He charged about \$150 only because he had already examined the person.
257	Gorham	Says Dr. Cunningham charged less than \$20,000 for his work.
265	Vice Chair Anderson	Asks how to keep costs down in these cases.
280	Gorham	Answers "do away with the death penalty." In Marion County

		since 1991, the average aggravated murder death penalty case cost about \$60,000 for attorney fees; \$21,000 for expert fees, for a total of about \$81,000 average cost. In regular cases, the cost is around \$14,000 on average per murder case.
300	Dingle	Defers to Harclerod testimony regarding costs.
331	Stephanie Tuttle	Prosecutor in Marion County for nine years. Describes the <i>Miles</i> case. Explains why it took two years to get to the case due to the defense's attempt to prove that the defendant was under the influence of Paxcil when she committed this crime. Explains how defense searched for an expert witness. Explains the defendant's blood tests that showed no Paxcil derivatives.
TAPE 38, B		
015	Tuttle	Continues relating how the defense spent a lot of time tracking down an expert witness. States the delay caused added expense in keeping the defendant in jail.
030	Gorham	Replies that he authorized the tests in this case. Describes tests that would be needed for Paxcil presence in defendant's system at time of the murder. The defendant had no toxicology reports indicating that blood or urine was ever tested for Paxcil metabolites.
072	Rep. Macpherson	Asks if there should be parity in the expenses between defense and prosecution.
090	Gorham	Supports the parity idea. Prosecution has much more resources than the defense in most cases. Death penalty cases are different.
095	Tuttle	Disagrees as to whom has the more resources in these cases.
108	Bill Taylor	Does not agree with parity. Supports keeping costs reasonable. Committee Counsel. Gives example of Paxcil disclosure. Can that be brought up after conviction?
123	Gorham	Answers, absolutely, on the grounds that the defense attorney did not zealously represent the defendant and was ineffective.
118	Tuttle	States that the defendant was tested by blood and urine analysis and marijuana evidence was found but not Paxcil.
132	Vice Chair Anderson	Asks can a defendant be brought back if there was not sufficient funds to sufficiently represent him.
156	Joshua Marquis	District Attorney for Clatsop County since 1994 (EXHIBIT E). Relates the <i>Garner</i> case. Defense was by Mr. Cross and Katherine Correll. <i>Garner</i> is on appeal. Discusses issues: psychologist from California, Mr. Lokia, billed over \$30,000; another witness who had been a teacher and knew the defendant from his previous jail term was paid to testify; Judge Brownhill allowed expenses. An expenditure for Godiva chocolates was questioned (EXHIBIT F). The two years delay was due to challenges to the jury list.
263	Cross	Defense Counsel for Mr. Garner. Describes the California psychologist, Mr. Lokia, as a premier psychologist and an expert forensic witness in capital cases. Explains choices of other witnesses and explains why they were needed.
400	Cross	Explains the chocolate issue. Discusses why it took three years to go to trial.
TAPE 39, B		
018	Cross	Continues explaining the costs in <i>Garner</i> .
062	Chair Williams	Asks for counsel in <i>Barone</i> and <i>Lloyd</i> to submit written material.
011	Doug Harclerod	Lane County DA. Oregon District Attorneys Association.

		Discusses the fundamental policy issue which may conflict with the idea of constitutionally representing indigent defendants adequately or better. To raise standards, fiscal accountability is critical. There needs to be written guidelines for indigent defense funding. For example, not bringing in out-of-state experts when there are in-state experts available. Hourly rates could be established. Discusses the need for additional funds.
145	Ross Shepard	Director, Public Defender Services of Lane County. Says the testimony does not indicate consistent abuse of the indigent defense cases. There are individual cases that draw differences of opinion.
149	Chair Williams	Refers to a “substantial right” under the Court of Appeals.
155	Harcleroad	Suggests disclosure of financial condition of the case should be looked at.
187	Shepard	States there is no pattern of abuse in the indigent defense services. Lack of adequate resources is evident. Statute is not considered at this time. Commission should set its own standards and methods of review. Agrees that the fees of \$40 per hour are inadequate. Most hourly fees are obsolete.
280	Harcleroad	States that the amount of spending can be disclosed. States that the public must know how the money is spent. There needs to be disclosure of public money spending.
320	Rep. Shetterly	Mentions that the system, in good times, there are irritants but in down times these become significant to budgets. Suggests resources for the prosecution should be brought to equal the defense.
373	Rep. Barker	Asks about post-trial disclosure.
387	Shepard	Responds it is not impossible.
414	Vice Chair Ackerman	Comments on importance of district attorney office administration.
430	Rep. Krummel	Asks about contracts for lawyers. Prosecutors have use of state resources such as Oregon State Police and other agencies.
TAPE 40, A		
040	Chair Williams	Asks Ms. Christian to respond offline to Rep. Krummel on these questions.
044	Shepard	Responds that in theory the prosecution has all the government agencies to help.
062	Harcleroad	Agrees there is not enough resource for the DA’s. Describes access to agencies for assistance. The level of assistance is the question.
077	Christian	Explains disclosure of indigent defense accounts.
122	Chair Williams	Thanks participants. Says discussion of issues has been useful. Says the question is, what is constitutionally adequate defense? Oregon wants adequate and equal defense.
156	Chair Williams	Adjourns meeting at 3:03 P.M.

EXHIBIT SUMMARY

- A – Informational, Indigent Defense Account Payments Chart, Ann Christian, 1 p**
- B – Informational, Letter, Daniel Norris, 2 pp**
- C – Informational, Affidavit of M. Rader, Daniel Norris, 3 pp**
- D – Informational, Written testimony and opinion of Judge Dickey, 15 pp**

E – Informational, Written testimony with charts, Joshua Marquis, 13 pp

F – Informational, Written testimony, Katherine Correll, 1 p