

OREGON LAW COMMISSION

June 13, 2003
2:00 p.m. Tapes 6 and 7

Capitol Building, Hr. Rm. B

MEMBERS PRESENT:

- Representative Lane P. Shetterly, Chair
- Senator Kate Brown, Vice Chair
- Steven K. Blackhurst
- Chief Justice Wallace P. Carson, Jr.
- Professor Sandra A. Hansberger
- Professor Hans Linde
- Gregory R. Mowe
- Attorney General Hardy Myers
- Professor Bernard F. Vail
- Representative Max Williams, II

MEMBERS EXCUSED:

- Dean Symeon C. Symeonides
- Professor Dominick R. Vetri
- Martha L. Walters

STAFF PRESENT:

- Wendy J. Johnson, Assistant Executive Director
- Rosalie M. Schele, Administrative Assistant

MEASURE/ISSUES HEARD:

- Approval of Minutes from February 24, 2003 Commission Meetings
- Executive Director's Report
- Program Committee Update
- Work Group Updates
- Other Business

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 6, A 09	Chair Lane Shetterly	<p>Calls to order the meeting of the Oregon Law Commission at the Capitol Building, Hearing Room B in Salem at 2:05 p.m. Explains that we have been informed of traffic accidents on Interstate 5 and this is causing a delay in the arrival of some members and meetings in the Capitol are occupying Senator Brown and Representative Williams for a while. But there is a quorum present for the Law Commission to begin.</p> <p>Asks for discussion or corrections on the minutes and, hearing none, requests approval of the February 24th minutes from the last Oregon Law Commission meeting (Exhibit A).</p> <p>Moves that the Commission approve the February 24, 2003 Commission meeting minutes. Asks for objections or changes and hearing none, the Chair approves the minutes.</p>

Vote 7-0. So ordered.

- 37 Wendy J. Johnson Asks Wendy J. Johnson to give the Executive Director's Report in the absence of David Kenagy.
Reads a note from David R. Kenagy about his health condition, reporting that his immunoglobulin IV infusions continue but this treatment should end in July and be followed by a less aggressive treatment thereafter.
Informs that there is no news from the legislature on the Oregon Law Commission budget.
- 71 Heather Vogelsong Introduces Heather Vogelsong, a 2L at Willamette University College of Law, as the new Oregon Law Commission Research Assistant.
Introduces herself as a second year law student that started work with Oregon Law Commission on May 12th and explains that she has been attending the hearings for the Oregon Law Commission bills.
- 83 Wendy J. Johnson Continues with her report: Work continues looking at proposals for the formation of Work Groups for the next session; on March 18th she gave a presentation to the Mary Leonard Law Society; on June 4th she presented a CLE to the Court of Appeals and the Supreme Court staff attorneys and law clerks. As a result of that presentation, Laura Keenan, one of the staff attorneys will work with Chief Judge Deits to set procedures for an internal process to funnel proposals from the judiciary over to the Oregon Law Commission as their budget allows.
Discusses the appointments and reappointments of the members of the Oregon Law Commission. The Oregon State Bar appoints three members and one of their appointees, Greg Mowe, has a term that is up for renewal. The Board of Governors at the OSB is meeting at this moment and we expect a reappointment.
(An interruption occurs with noises and comments as Senator Kate Brown and Representative Max Williams enter the dais.)
Continues the report by informing that all the Senate and House appointments expire on August 31, 2003, but at this time, Senator Kate Brown has been reappointed by Senate President as well as Representatives Lane Shetterly and Max Williams by the Speaker of the House.
- 150 Chair Lane Shetterly Explains that originally Max Williams was an appointee of the Senate because that was before he was a Representative. Steve Blackhurst, in turn, was an appointee of the House but this has left Steve as "odd man out" now that Max is a Representative who has been appointed by the House. Informs that he believes that the Senate plans to appoint a senator this time (and Senator Vicki Walker was appointed a few days after this meeting).
Relates that Steve Blackhurst and himself go back to their youths when their fathers were both on the Oregon Board of Bar Governors. Extends thanks to Steve Blackhurst on behalf of the Oregon Law Commission for his work and service and then presents a plaque of appreciation that shows his term began on

185	Steve Blackhurst	September 1, 1999 and continues until August 31, 2003. Thanks everyone and jests that he has felt that he was “odd man IN” from the beginning since Max Williams became a representative.
195	Chair Lane Shetterly	Commends Steve Blackhurst for his graciousness with what the Senate and House have worked out on these appointments.
200	Rosalie M. Schele	States that, although he will not be a Commissioner, she is not removing his name from the master lists because as a member of various Work Groups his contributions are essential.
205	Wendy J. Johnson	Continues with the Executive Director’s report: Explains to the Chairs of the Work Groups that, while watching their bills go through the process of the 2003 Legislative Session, they need to consider whether there are details and items that need to be continued for the 2005 Session. If so, the Chairs should put together a proposal to present to the Oregon Law Commission for the continuance of their Work Group. The Program Committee hopes to review all those proposals before the September 18 th (later changed to September 19 th) meeting of the Commission.
219	Chair Lane Shetterly	Relates an interesting idea, that most might be seeing as they mature as a Commission and which possibly is a natural progression, that Work Groups continue because one sees things left unfinished or that there are details “to catch.” Asks Wendy Johnson if there is sufficient time for all agenda items.
229	Wendy J. Johnson	Answers Chair Shetterly that we are not pressed for time and states she has finished her report.
231	Chair Lane Shetterly	Continues to the second Program Committee item on the agenda (since Timothy Travis has not arrived for the first item) and calls Kathryn Garrett to the podium.
240	Wendy J. Johnson	Gives some background and refers to the white materials (Exhibit C) in the handout about the Putative Father Proposal, Juvenile Code Revision Work Group.
251	Kathryn Garrett	Introduces herself as an Assistant Attorney General with the Oregon Department of Justice in the Family Law Section, which is part of the Department of Human Services dealing with termination of parental rights matters and also represents the Division of Child Support. Today comes as a member of the Juvenile Code Revision Work Group of the Oregon Law Commission. Refers to her outline on a sheet of paper in front of all the commissioners. Explains that the problem is definitions in the statutes and lets the commissioners know that Linda Guss might assist with any questions that may arise.
289	Chair Lane Shetterly	States that this is a perfect discussion for the Friday before Father’s day.
297	Kathryn Garrett	Defines the various types of fathers by starting with the two broad categories of legal fathers and putative fathers. Legal fathers have established paternity through a legal method or have affirmatively established that they are the father. Putative fathers are biological fathers that have not established legal rights of fatherhood. There are subcategories: the legal father can be either presumed or rebuttable. Refers to the outline to help clarify (Exhibit C) all

the subcategories. The putative father has three subcategories as shown on pages 3 and 4.

Explains that there is some long-standing policy in Oregon and other states to not upset the distinctions of these subcategories. One reason for this policy is when there is a child who happily believes someone is his father and this particular father has had this distinction for years and years, no one wants a DNA test to be administered and possibly upset this child's life.

334 Senator Kate Brown

Affirms that these type of problems do happen; she has had some of these cases.

336 Kathryn Garrett

Continues explaining the other definitions in **Exhibit C**. Refers to where the proceedings are located in the ORS 109.071(1)(b) and ORS 419A.004(17)(b) and notes that there are not identical definitions for "fathers" of children born in wedlock. The Supreme Court has written on the rights of putative fathers and has articulated definitions that result in a kind-of sliding scale of rights to be afforded fathers depending on the degree of responsibility the father has asserted. Explains the Stanley v. Illinois case where the phrase, Stanley putative fathers, originated.

398 Prof. Hans Linde

Asks for clarification, they do not really call them the Stanley case fathers. That is your phrasing and it might mislead the understanding. Wants to know if this is correct.

Continues to ask if it is possible to think of these statutory categories or characteristics without reference to Supreme Court cases.

401 Kathryn Garrett

States, "Yes," that those are her words when using the Stanley case. Thinks the legislature has tried to track Supreme Court cases.

402 Chair Lane Shetterly

Jokes that one can't call all fathers, "Stanley."

412 Prof. Hans Linde

Wants to know if it is possible for the Work Group members to think about the statutory characteristics of fathers without reference to Supreme Court cases. Emphasizes that thirty-years later that they cannot be using these phrases so they might want to stay clear of them. Points out that she presented this same example in the Program Committee.

427 Kathryn Garrett

Explains that she was using the reference to Stanley to point out a benchmark to clarify definitions and says that Professor Linde discussed this same problem in the Program Committee meeting.

432 Chair Lane Shetterly

Jokes, "so you did it again?"

433 Prof. Hans Linde

Points-out that, after teaching for a living for many years, repetition is not uncommon.

439 Kathryn Garrett

Explains in reference to what the juvenile court community calls "Stanley putative fathers" is based on the Stanley v. Illinois case where the father, Mr. Stanley, had lived intermittently with his children and the mother for 14 years, had supported them through this time and had had relationships with them but had never married. When the mother died, the children became wards of the court and he was not allowed a hearing to determine if he was fit or not. He was not entitled to any process at all under the Illinois law. The Supreme Court looked at the case and made the decision that he was a "father" who had

established a relationship with his children and therefore had rights; at a minimum, he had a right to be heard before his children could be taken from him.

Another Supreme Court case is the Lehr v. Roberson case in which fathers were held to not be entitled to notice; these fathers are often called “pagan putative fathers.” The child was two years old and the father, Mr. Lehr, did not have a significant relationship with the child, having only visited once when the child was in the hospital right after birth. He did not make contributions either. Then the mother remarried when the child was two years old and the new husband wanted to adopt the child. In New York, a putative father could register to receive notice before his child was going to be adopted. Mr. Lehr had not registered but after this man adopted the child, Lehr raised a challenge. The Supreme Court determined that that Lehr waived his rights because he had not established a relationship and had not registered.

In Oregon, the problem is that the statutes are not consistent with the U.S. Supreme Court decisions or with Oregon’s other statutes. In the Juvenile Code there are two places that make reference to the putative fathers but it is not in the definition of legal parent, found at ORS 419A.004(17).

TAPE 7, A
86

Kathryn Garrett

One of the goals of the proposal is to enact standards articulated in the Stanley v. Illinois case. When drafting legislation such as this, other policy decisions should also be looked into. The inconsistencies between the Juvenile Code definition and the Domestic Code definition, in and of itself, pose a problem. The Juvenile Code Revision Word Usage Sub-Work Group started looking into this issue and saw that it was a larger problem than they were able to address this session.

122

Chair Lane Shetterly

Thanks Kathryn for a very interesting and very thorough overview.

125

Bernie Vail

Refers to page 2, heading 3c dealing with Voluntary Acknowledgement of Paternity, and wonders if the family law reference to ORS 109.070 which refers to ORS 432.287, also requires the consent of the mother to file the voluntary acknowledgement of paternity form or asks if that is something that can be done unilaterally.

140

Kathryn Garrett

Asks if Linda Guss can assist in answering this question.

143

Linda Guss

Introduces herself as an Assistant Attorney General with the Department of Justice and works in the General Counsel Division, advising the Department of Human Services Child Welfare Program. It is her understanding that it is a joint declaration.

150

Bernie Vail

Even though one statute refers to the mother and the other doesn’t, the form requires the mother’s consent.

156

Linda Guss

Points out that she does not have ORS 432.287 in front of her, but she believes that it is a joint declaration.

158

Chair Lane Shetterly

Points-out that Ronelle Shankle is shaking her head in the affirmative so we have confirmation.

160

Linda Guss

Continues explaining that the main point is that one statute doesn’t speak to the biological father and the other does. Comments that she has had many experiences during the course

		of juvenile court proceedings where this was a problem; in one case, a man who was not the biological father signed up to be one, and luckily we were able to show that the two people did not even know each other until the time of the trial.
177	Prof. Hans Linde	Inquires, "So far, up to now, you have only talked about notice; after giving notice what determines your substantive interest that you can assert?"
185	Kathryn Garrett	Asserts that it is a little hazy even when referring to the Supreme Court cases whether they are talking about notice only or a procedural right or a substantive right.
191	Prof. Hans Linde	States that since the notice requirement derives out of the Due Process Clause, they first must establish an interest and it seems that it would be healthier if they could establish what kind of claims might have some substantive interest in the matter of Oregon policy and then, of course, you give notice. If you don't know what the notice can get you, after you give notice, and just tack it behind the Supreme Court opinion, after that we don't know what happens. This doesn't help much. Explains that his point is that he wonders if this was a technical drafting problem; we should concentrate on policy.
225	Kathryn Garrett	Under Oregon law in the Juvenile Code context, the fact that these fathers are entitled to party status, gives them more than just notice.
228	Prof. Hans Linde	Says, "What does it get them? Party status, again, is there to protect a substantive plan; it is not party status for the fun of being a party."
231	Kathryn Garrett	Indicates that once a father is included in a juvenile case, he is looked to as a resource.
237	Prof. Hans Linde	Proposes that looking at this from a U.S. Supreme Court standpoint, one is always looking at a person who is putative and wants to be. It can work in the other direction in which case you are not that anxious to become a party.
243	Linda Guss	Highlights that along with those rights, one has obligations.
244	Prof. Hans Linde	Agrees that the case might not have anything to do with the claim of rights and only to do with applications. We need to concentrate on what the outcomes will be and not who gets to play.
250	Kathryn Garrett	Thinks that is a good place to end.
252	Senator Kate Brown	Asks if there are any further questions (as Vice Chair she takes the gavel because Chair Shetterly stepped out of the room) and, hearing none, requests a motion.
256	Steve Blackhurst	Moves that the Oregon Law Commission adopt the recommendation of the Program Committee and endorse the Juvenile Code Putative Father Project Proposal presented by Kathryn Garrett and approve the formation of a new Sub-Work Group of the Juvenile Code Revision Work Group.
262	Senator Kate Brown	States that Commissioner Steve Blackhurst has made a motion that the Oregon Law Commission adopt the recommendation of the Program Committee and endorse the Juvenile Code Putative Father Project Proposal presented by Kathryn Garrett and approve the formation of a new Sub-Work Group of the Juvenile Code Revision Work Group.

265	Bernie Vail	Seconds the motion.
266	Senator Kate Brown	Asks for discussion or questions and hearing none.
		Motion passes.
		Vote 9-0.
		In the absence of Timothy Travis, continues on the agenda to the status of the 2003 bills (Exhibit D) and explains about the Juvenile Code Revision bills, SB 67, SB 68, SB 70, SB 71, SB 72 and SB 2272, that have been signed by the Governor. States that she needs some help from her friends for the bill SB 887 because it is in the Ways and Means Committee. Thanks the House Judiciary Chair, Max Williams as well as Chair Lane Shetterly. Commends the Senate Judiciary Chair, John Minnis, who was also very helpful.
320	Wendy J. Johnson	Suggests hearing the report on the Eminent Domain bills.
321	Greg Mowe	Reports on the status of the Eminent Domain bill. The original Eminent Domain bill, HB 2273, had a broad relating clause and was morphed into HB 3370, HB 3371 and HB 3372. These bills consolidated the eminent domain statutes, clarified the offer and acceptance language, provided some emergency procedures and, the most substantive change, provided a uniform pre-condemnation entry statute. All went well in the House and on the Senate side there was a small difficulty when there was a concern by one property owner who questioned environmental testing and the conditions that should be placed on environmental testing and liability. HB 3372 ran into a complication because the attorney who wanted the changes was from his (Greg Mowe's) law firm. The Work Group was able to coalesce when the government side of the Work Group was organized by Christy Monson; she did a great job of negotiating, ultimately a compromise was reached and the Senate passed the bill.
		Cautions the Commissioners that concerning their bills, they do not have the traditional freedom to negotiate like other groups, so their bills can be derailed easily.
364	Chair Lane Shetterly	Compares this problem with the Law Commission's bills as raising a child and sending them off to school only to wonder where did all those bullies come from. Congratulates Greg Mowe as he watched the Eminent Domain bill progress. It is amazing to see a bill become a law.
379	Greg Mowe	Thanks Wendy Johnson and David Kenagy for doing a great job especially considering the time pressure that existed towards the end.
381	Rep. Max Williams	Points out that it was a worthy cause getting the original bill broken down into three pieces.
385	Chair Lane Shetterly	Explains the problems with the relating clauses that can be taken and be amended by other groups or person.
391	Rep. Max Williams	Suggests that in this case it might have been a certain Portland utility.
392	Chair Lane Shetterly	Explains that the original Eminent Domain bill was stuck in the Committee until we had it redrafted into the three bills.
396	Rep. Max Williams	Says, "They were boring to everybody else but us."
397	Attorney General Hardy Myers	Asks what the relating clause was.

398	Chair Lane Shetterly	<p>States that the relating clause was “Relating to Eminent Domain” in the original bill.</p> <p>Calls on Timothy Travis, who recently arrived, to discuss the Juvenile Code Revision Split Cleanup Project Proposal (Exhibit B).</p>
406	Timothy Travis	<p>Says, “Nothing would give me more pleasure.”</p>
407 410	Chair Lane Shetterly Timothy Travis	<p>Says in jest, “That is very sad.”</p> <p>Introduces himself as Timothy Travis, Project Manager for the Oregon Juvenile Court Improvement Project. Explains that this proposal was a result of the last meeting of the Juvenile Law Sub-Work Group when someone mentioned that there is some clean-up necessary in the delinquency code (Exhibit B).</p> <p>Gives some background by explaining that in the early 1990s the Juvenile Code was split into three sections. One section to deal with dependency law (child abuse and neglect), another with delinquency law and the last, an administrative section that dealt with both. These changes reflected the fact that delinquency and dependency law were moving away from one another. Public policy was moving away from treating delinquents in what was “their best interest” towards treating them according to ideas of public safety and rehabilitation, saving “the best interest” model for the abused and neglected children. When that division took place, there were a large group of practitioners and people involved who knew they might be making mistakes because they did not know what all the ramifications might be. So, some pieces of the dependency code drifted into the delinquency code at that time. Now that 10 years has passed, we know that there are some things in the delinquency code that simply no longer belong there.</p> <p>One has to use intervention in delinquency cases to participate because there is not much of a role when a person is not a child’s legal parent. The second example has to do with case planning in the dependency arena; the statute states that one cannot ask a parent, whose child is in foster care, to do any services that are directly related to the reason the child is in foster care. There was a time when a child was in foster care we could ask a parent to do anything we wanted. For example, now we can’t ask a parent to go into the Drug and Alcohol Treatment Program if the reason the child is in foster care is because the parents don’t manage the child well. This idea should be in the Juvenile Dependency Code but it got put into the Delinquency Code.</p> <p>We have other such items that need to be analyzed and decisions need to be made to remove them if appropriate (he uses an analogy of erratic boulders strewn around the landscape-huge pieces of geology that were left where they do not belong through flooding or glacial activity).</p>
487	Chair Lane Shetterly	<p>Retorts, “Sometimes we make monuments of them.”</p> <p>Asks if there are any questions and hearing none, asks for a motion.</p>
489	Attorney General	<p>Moves that the Oregon Law Commission adopt the</p>

	Hardy Myers	recommendation of the Program Committee and endorse the Juvenile Code Split Cleanup Project Proposal presented by Timothy Travis (Exhibit B) and approve the formation of a new Sub-Work Group of the Juvenile Code Revision Work Group.
493	Chair Lane Shetterly	States that a motion has been made that the Oregon Law Commission adopt the recommendation of the Program Committee and endorse the Juvenile Code Split Cleanup Project Proposal presented by Timothy Travis (Exhibit B) and approve the formation of a new Sub-Work Group of the Juvenile Code Revision Work Group. Asks for any discussion and hearing none the motion carries. Vote 9-0 So ordered. Returns to the Work Group updates (Exhibit D) and goes to the Civil Rights Work Group.
499	Wendy J. Johnson	Recalls that there were two clean-up bills for this 2003 Session under the Civil Rights Work Group that Jeff Carter chaired; both bills have passed the House and Senate and are waiting for the signature of the Governor.
512	Chair Lane Shetterly	Thanks Marcia Ohlemiller from BOLI for her tremendous help. Returns to the agenda item HB 2274, the Judgment Garnishment Bill, and calls upon the Chair of the Work Group, Rep. Max Williams.
TAPE 6, B 60	Rep. Max Williams	Explains that the Work Group had a garnishment revisers bill from the Judgments/Enforcement of Judgments Work Group and the bill passed quite easily through the House and Senate and the Governor has signed it. Articulates that the other Judgments Bill, HB 2646, remains in the Senate Judiciary Committee and is scheduled for a hearing on Wednesday. The Work Group made some revisions in the Judiciary Committee; he believes the Commission will be pleased with the product.
105	Chair Lane Shetterly	Ask if this is the largest or longest bill in the Session.
110	Rep. Max Williams	Maintains that it may be because there were two volumes to it and he does not recall having another two-volume bill pass his desk this session but the session is not yet over.
117	Sandra Hansberger	Reports that HB 2277 (Administrative & Judicial Child Support Work Group) was signed by the Governor on May 28 th and she cannot remember any problems that it encountered.
120	Chair Lane Shetterly	Comments that HB 2277 was easy sailing. Calls Bernie Vail to report on HB 2278, the Public Body Work Group's bill, which is not having an easy time.
124	Bernie Vail	Reports that the Public Body bill, HB 2278, has a relating clause that can include many things and it is being held up in the Senate Judiciary Committee for possible amendments. The bill has a work session scheduled for the 18 th of June.
131	Chair Lane Shetterly	Asks Wendy Johnson if she has any up-to-date information about the Public Body bill.
132	Wendy J. Johnson	Discloses that she knows something that she is not at liberty to

138	Rep. Max Williams	say. Mentions that the bill was originally in the House Judiciary Committee and he is not aware of what these amendments might be.
145	Bernie Vail	Says, "We thought it was such a simple bill."
146	Chair Lane Shetterly	Requests a report about the Saving Statute Work Group.
149	Wendy J. Johnson	Conveys that the Governor signed HB 2284, on June 11 th .
156	Chair Lane Shetterly	Requests a report on HB 2645, the Administrative & Judicial Child Support Work Group bill about conflict resolution.
157	Sandy Hansberger	Indicates that the Governor signed HB 2645 on May 28 th .
161	Chair Lane Shetterly	Requests a report on HB 3027 from the Judicial Review Work Group.
162	Attorney General Hardy Myers	Jokes that it passed the House and Senate and is awaiting the Governor's signature.
166	Chair Lane Shetterly	Says in jest, "Wake up, wake up everyone."
167	Rep. Max Williams	Says, "It's not me I am worried about, Mr. Attorney General, small local governments all over the state just had cardiac arrest."
168	Attorney General Hardy Myers	Reports that he was so pleased at how they backed off all their objections and rallied behind the bill. In seriousness, reports that HB 3027 was referred to the House Judiciary Committee with a subsequent referral to the Ways and Mean Committee. It did not have a hearing in the House Judiciary Committee. Proposes that this particular work be back before the Commission through the Program Committee at a later date.
177	Chair Lane Shetterly	Asks if there are any final bills and wants to know the score.
182	Wendy J. Johnson	Reports that the Governor has signed 10 of the Law Commission bills, 3 are still in the Senate, and it seems that there will be a final count of 16.
197	Chair Lane Shetterly	Thanks all the commissioners for their work and support. Asks for updates on Work Groups for the 2005 Session.
200	Wendy J. Johnson	Informs the Commissioners that the Conflict of Law Work Group has a meeting set for July 8 th and it is meeting regularly now. Professor Dom Vetri sent a note that he has turned his attention back to the Landowners Liability/Status Trichotomy Work Group. He is not able to be here today because of a CLE he is giving. The Nonprofit Social Service Delivery Work Group has Professor Steve Green working on research to determine whether legislation is needed to improve the delivery of social services by religious and non-religious organizations. Professor Green hopes to have a report ready for presentation at the Law Commission meeting on September 18, 2003.
229	Chair Lane Shetterly	Recognizes a question from Commissioner Linde.
230	Prof. Hans Linde	Questions whether Commissioner Vetri has members established for the Landowners Liability/Status Trichotomy Work Group.
232	Wendy J. Johnson	Verifies that there are no members at this time but it is a project that has been approved. Commissioner Dom Vetri is looking at the need for a statute. (This was a project that began before she came to work for the Commission.)
246	Prof. Hans Linde	Points out that the Commission is not limited to drafting legislation. For example, in the administration of state funded

		social programs there are a lot of things that can be done by regulation that one does not need a statute and the Commission can make such recommendations.
249	Chair Lane Shetterly	Confirms that in both the Landowners Liability/Status Trichotomy Work Group and the Nonprofit Social Service Delivery Work Group, they expect them to come back with recommendations to the Commission.
256	Bernie Vail	Reports that the Spousal Elective Shares Work Group will begin meeting in the fall.
259	Wendy J. Johnson	Acknowledges that the Spousal Elective Shares Work Group does have members though they expect to add members when they start up again in the fall.
262	Chair Lane Shetterly	Two comments before leaving the agenda item, Work Group Updates, are as follows: 1.) We should take great care when writing the relating clauses because we tend to forget to make them carefully; and 2.) The Commission commends Dave Kenagy and Wendy Johnson, as well as Rosalie Schele, for all their work while carrying these bills and often waiting for hours to get them through the legislature. (Applause in agreement)
292	Prof. Hans Linde	Shares that he has never noted any other state that has this hijacking of bills and wants to know if there are other states with this problem and how do they handle it.
300	Chair Lane Shetterly	Reiterates what was said about relating clauses and how they should be narrow and asks if anyone knows if other states have that kind of problem. Knows that other states can amend from the floor but he has not talked with anyone from another state about this.
308	Prof. Hans Linde	Wonders if this hijacking of bills because of relating clauses is a procedure in other states as well. Maybe it is a procedure or consequence that only occurs in Oregon but it can be a real obstacle and deserves to be looked into.
327	Attorney General Hardy Myers	Thinks the hijacking of particular bills occurred from time to time when he was in the legislature.
331	Rep. Max Williams	Says that it is now stock and trade in the legislature.
334	Chair Lane Shetterly	Concedes that it is a double-edged sword since he has availed himself to the use of it; what happens is our sessions are short and there is a deadline on the production of new bills. So, as a result of all this they are seeking ways to manage an issue that they feel should be addressed in this legislative session.
352	Rep. Max Williams	States that no committee chairman is worth their weight in salt that doesn't have in their back pockets a dozen or so relating clauses that they could use for ammunition.
359	Prof. Hans Linde	Asks for clarification that you can't reserve relating clauses with no text attached.
361	Rep. Max Williams	Responds, "That is correct" and a good committee administrator will request one-word changes in various statutes to have a bill that is relating to crime or juveniles or courts or appellate review.
366	Chief Justice Wally Carson	Jests, "Be careful!"
367	Rep. Max Williams	Continues explaining, in this session they have used and availed themselves on behalf of the courts, a bill with a "relating to

		courts” relating clause that will become a bill that will do a lot of positive things in cooperation with the courts.
370	Prof. Hans Linde	Questions, “Is it worth it? Is the Constitutional requirement worth it?”
372	Sen. Kate Brown	Says, “I certainly think so and having served in the minority party ... I have used it as an effective tool to kill bills that I didn’t like and to get things moving.” Thinks the minority can use it as effectively as the majority and it creates a lot more opportunity.
380	Prof. Hans Linde	Asks, “To do what?”
381	Sen. Kate Brown	Answers, “To get your legislation passed...or killed.”
382	Prof. Hans Linde	Wonders if there were no Constitutional requirement for the subject of a bill to be described in the relating clause, would that do any harm.
385	Rep. Max Williams	Responds, “Yes, I believe it would do harm.” Proposes that when a bill is being brought forward to the committee, the relating clause defines the parameters of the amendments that could be under consideration for the committee; broad relating clauses do allow for broad amendments. It does define the possible amendments and if someone comes with a wacky idea, it doesn’t take very long before it is eliminated. Therefore, the relating clause does act as a protector as well.
403	Bernie Vail	Comments, “Doesn’t it really go the heart of it? One of the major criticisms of the federal legislation” is that someone sticks on something that has nothing to do with the subject matter of the bill and it breezes right on through.
407	Prof. Hans Linde	Disagrees but understands the idea.
411	Bernie Vail	Clarifies his point that it is possible to have it slip through with no one reading the bill.
413	Attorney General Hardy Myers	Thinks a lot is benign and the most difficult situations are when it is a dead bill that is being used.
423	Prof. Hans Linde	Clarifies that the subject came up and he had some questions but he is “not trying to change the rules.”
429	Chair Lane Shetterly	Believes the reason why they will probably never change this procedure is that it is a double-edged sword. When the Eminent Domain bill was hung up in the Environment and Land Use Committee, “the first thing we did was to go looking for relating clauses on bills that weren’t moving.”
432	Prof. Hans Linde	Contends that it should be possible to defeat an irrelevant amendment on its merits rather than pulling a good bill because the relating clause allowed an amendment to be written.
433	Sen. Kate Brown	Responds to Hans Linde’s comments, “That is great if you are in the majority but there isn’t anybody in the majority in the Senate.”
440	Attorney General Hardy Myers	Wants to add one thing, “It is not so relevant now when the notion of committee subject matter jurisdiction is no longer embodied in House Rules but, when he was Speaker,” the relating clauses could act to help constrain the ability of a given committee to wander way out of its own jurisdictional field.
449	Chair Lane Shetterly	Comments that all this is a session-by-session rule change and this session it did change.
450	Attorney General Hardy Myers	Asks, “Did those stay in the House rules?”
451	Chair Lane Shetterly	Responds, “Yes.”

452	Sen. Kate Brown and others	Explains that sometimes they had to use other bills to get the relating clause. (Others are talking but cannot be understood.)
455	Chair Lane Shetterly	Concludes, this is “all the arcane and sometimes incomprehensible rules of politics.” Notes that the next meeting of the Oregon Law Commission is at the beach.
458	Attorney General Hardy Myers	Asks if the Chair has an update on the budget for the Oregon Law Commission.
459	Chair Lane Shetterly	Replies, “No,” but explains that so far they are in the Legislative Counsel budget; the level of funding is yet to be announced.
462	Rep. Max Williams	Explains that he and Sen. Brown co-chair the Legislative Counsel Committee and whatever the allocation is now, it should remain proportional as they move forward and the Legislative Counsel’s budget should be known in a short period of time. There may be a little less cash. Jokes, “Sorry that there will not be any pay increase for the Commissioners.” (They volunteer their time.)
476	Chair Lane Shetterly	Repeats that the next meeting of the Oregon Law Commission will be at Seaside, Oregon on September 18 th at the Oregon State Bar Convention (if they can be excused from the Legislature floor session for that day).
478	Senator Kate Brown	Retorts, “I don’t think that he is being funny.”
479	Chair Lane Shetterly	Confirms that he really was being funny. Summarizes that they are at the end of the agenda. Gives one last farewell with thanks to Commissioner Steve Blackhurst and looks forward to working with him in whatever capacity that may come. Adjourns at 3:31 p.m.

Submitted By,

Reviewed By,

Rosalie M. Schele,
Administrative Assistant

David R. Kenagy,
Executive Director

EXHIBIT SUMMARY

A – Minutes from prior meeting of the Oregon Law Commission, February 24, 2003, 19 pages.

B – Juvenile Code Split Cleanup Proposal, May 28, 2003, 2 pages.

C – Putative Father Proposal, May 28, 2003, 20 pages.

D – Report of the Oregon Law Commission Bill for the 2003 Legislative Session, June 5, 2003, 17 pages.