

SENATE COMMITTEE ON  
JUDICIARY

February 8, 1993 Hearing Room C  
1:00 p.m. Tapes 19-20

MEMBERS PRESENT: Sen. Dick Springer, Chair  
Sen. Neil Bryant  
Sen. Jeannette Hamby  
Sen. Bob Shoemaker  
Sen. Catherine Webber

MEMBERS EXCUSED: Sen. Grattan Kerans

STAFF PRESENT: Bill Taylor, Committee Counsel  
Kirk Bailey, Committee Clerk

ISSUES DISCUSSED: Informational Hearing  
Public Hearing on SB 256  
Work Session on SB 217, SB 219, SB 220, SB 231

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These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

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TAPE 19, SIDE A

003 CHAIR SPRINGER: SEN. BRYANT opens the hearing at 1:04pm in the absence of CHAIR SPRINGER.

Informational meeting

WITNESSES:

TOM TONGUE, JOINT COMMITTEE ON NEW JUDGESHIPS  
RANDY WEISB ERG, MULTNOMAH COUNTY REFEREE & PRO TEM JUDGE.

006 TOM TONGUE: Submits and reviews written testimony (EXHIBIT A).  
Report on new judgeships and related judging services.

073 RANDY WEISB ERG: Reviews adjusted weighted caseload study (EXHIBIT B).

131 SEN. BRYANT: In weighting was consideration given to charging by District Attorney's.

WEISB ERG: No, not directly. Taken into account by number of cases

filed. Numbers reflect individual crimes. Taking anecdotal information to ensure numbers correspond to reality.

175 CHAIR SPRINGER: Describe different titles for judges in certain districts?

WEISB ERG: Some districts are short on judges.  
>Assessing possibility of using pro tem judges state-wide to deal with shortfall.  
>Question about whether judges should be elected.  
>Proposal (Rep. Clarno) to have elected magistrates.

217 SEN. SHOEMAKER: Review handout information?

WEISB ERG: Reviews table handout (EXHIBIT B).

264 SEN. HAMBY: How did you differentiate counties with a mix of circuit and district?

WEISBERG: Similar situations in counties. Counties are supposed to have separate duties for circuit and district courts. Get an idea of balance and overlap by seeing which county may be down in one category and up in another.

293 TONGUE: Representatives from counties were asked how they were increasing efficiency.  
>Cross fertilizaation of ideas has been promoted to share information.

314 SEN. SHOEMAKER: Efficiencies due to size not included in tables?

TONGUE: Counties are evaluated due to size, so Multnomah is considered more efficient than some smaller ones.

352 TAYLOR: Why increase in Multnomah County, civil or criminal?

WEISB ERG: Juvenile and criminal, primarily. Increase in drug cases.

TONGUE: Direct relationship between number of officers and number of cases. Addition of officers who are arresting people drives up numbers.

SB 256: Creates House of Delegates of Oregon Stae Bar.

WITNESSES:

CELENE GREENE, EXECUTIVE DIRECTOR, OREGON STATE BAR  
BOB BOIVIN, CHAIR, PUBLIC AFFAIRS COMMITTEE, OSB  
JULIE FRANTZ, PRESIDENT, OSB  
VERN GLEAVES, OSB

CELENE GREENE: Submits and reviews written testimony (EXHIBIT C).

>Bill will ensure full representation and accountability.  
>Similar organizations use a similar method.

TAPE 20, SIDE A

067 SEN. SHOEMAKER: How often will House meet?

GREENE: Yearly. Same as current town hall.

074 SEN. SHOEMAKER: Held in conjunction with bar.

GREENE: Yes.

076 SEN. SHOEMAKER: Travel expenses picked up by bar?

GREENE: No, but system encourages attendance and involvement.

084 SEN. BRYANT: Recommends adopting attendance requirements.

GREENE: Wasn't included because there are provisions for recall, but will consider it.

101 BOB BOIVIN: Important to attorney's in his district.

>Town hall doesn't work anymore.

>Many attorneys distant from Willamette Valley feel disenfranchised.

120 JULIE FRANTZ: Provides examples.

>1992 Bar convention: 300 members voting for 1100 total members.

>Survey ballot of Bar: vote was 2-1 in favor.

>Response has been positive in other counties.

145 VERN GLEAVES: Speaks in support of the bill.

178 CHAIR SPRINGER: What happens if vacancy created, by resignation or other reasons?

GREENE: Special election dependent on term; in interim, president can appoint delegate.

>If less than 18 months board appoints delegate.

193 CHAIR SPRINGER: Will House of Delegates convene more often?

GREENE: Don't expect it to. Will operate same as town hall. No special meetings have ever been scheduled.

204 SEN. SHOEMAKER: What are numbers we are talking about, categories of delegates?

GREENE: Reviews additional chart information on delegate breakdown (EXHIBIT D & E).

227 SEN. SHOEMAKER: What is out of state category?

GREENE: Added provision to ensure those out of state will have an

opportunity to participate.

234 SEN. SHOEMAKER: #11 corresponds proportionally to others?

GREENE: All regions are based on 100 members.

237 SEN. SHOEMAKER: Out of state is considered a region?

GREENE: Yes, out of state will total 11 regions.

239 SEN. SHOEMAKER: Will out of state delegates be out of state lawyers?

GREENE: Yes. Lawyers who maintain a practice elsewhere.  
>They would be disenfranchised without House of Delegate organization.

251 CHAIR SPRINGER: Additional expenses to bar?

GREENE: Don't expect any. Only possible expenses may occur in annual election process.

266 SEN. SHOEMAKER: In other states, has there been a diminishment of non-delegates who come to meeting?

GREENE: No.

291 CHAIR SPRINGER: Qualifications are the same as board?

GREENE: Yes.

293 CHAIR SPRINGER: Not going to reopen issue of public versus private attorneys service on House.

GREENE: No restrictions.

304 CHAIR SPRINGER: Campaigning for Board of Governors is increasingly costly? Do we face that problem?

FRANTZ: House will have many more delegates. Campaigning won't be as heavy.

327 BOIVIN: In smaller communities those who will run are already involved.

335 GREENE: Campaigning is not a problem. This provides opportunity for many more members to be involved.

352 CHAIR SPRINGER: Who designates section committee chairs?

GREENE: Selected annually by Board of Governors. Reviews appointment process.

408 CHAIR SPRINGER: Do we need to be concerned with block voting?

GREENE: A possibility in any campaign. Expect it to happen with House of Delegates.

436 FRANTZ: Very important to consider this bill a top priority in face of financial pressures on attorneys.  
>Eases burden of travel and lost business to attend annual meeting.

483 CHAIR SPRINGER: Sunset provision could be used on this legislation to provide a check if anyone interested.

TAPE 19, SIDE B

031 GREENE: BOB OLESON reminds committee that OSB is up for review in 1997 and House of Delegates would be a part of review.

038 SEN. WEBBER: Where do members vote if residence or office is a question?

GREENE: They would vote where-ever their official address is. Residence if not office.

051 GEORGE RIEMER, GENERAL COUNSEL, OSB : OSB rules, which are approved by Supreme Court, require business and residence address be kept on file. Residence address is default if no office address is available.

WORK SESSION

SB 217: Expands Board of Governors of Oregon State Bar from 15 to 19 members.

065 TAYLOR: Reviews bill.  
>Reviews SB 217-1 amendments deleting lines 17 through 19, p.3.  
(EXHIBIT G).

074 SEN. SHOEMAKER: Effective date? Ninety days after session?

079 RIEMER: 90 days would be fine. First election, April of 1994. Submits and reviews chart (EXHIBIT F).

119 MOTION: SEN. SHOEMAKER moves SB 217 be sent to the floor with DO PASS recommendation.

123 TAYLOR: Reviews amendments referenced above.

141 MOTION: CHAIR SPRINGER moves to adopt the SB 217-1 amendments, dated 2/3/93.

VOTE: CHAIR SPRINGER: Hearing no objection the amendments are adopted.

143 MOTION: SEN. SHOEMAKER restates motion to pass SB 217, AS AMENDED to

the floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. SEN. KERANS is excused.

148 CHAIR SPRINGER: The motion CARRIES.

152 SEN. BRYANT will lead discussion on the floor.

SB 219: Requires that all employees of Oregon State Bar be members of

Public Employee's Retirement System.

154 TAYLOR: Reviws bill and amendments.

>Comments on letter sent by Rodney Wegener, Oregon State Bar in answer

to SEN. SHOEMAKER'S questions about increase in bar dues.

>Letter indicates there will be no increase in fees.

>Cost to bar would increase \$13,900 due to other matters.

>Decreases expenses to PERS by \$11,000.

>Reviews amendments SB 219-1, restores bracketed material on p. 2,

lines

30 and 31.(EXHIBIT H).

WITNESSES:

BOB ANDREWS, LEGISLATIVE LIAISON, PERS

182 ANDREWS: Supports bill and amendments.

CHAIR SPRINGER: Due to impact on PERS, should this bill be referred to Labor?

205 MOTION: CHAIR SPRINGER: moves to ADOPT SB 219-1 amendments dated 2/3/93.

VOTE: Hearing no objection the amendments are ADOPTED. SEN. KERANS is excused.

211 MOTION: CHAIR SPRINGER moves SB 219-1 AS AMENDED be referred to

Committee on Labor and Government Operations with a DO PASS recommendation.

VOTE: In a roll call vote all members present vote AYE. SEN. KERANS is excused.

SB 220: Authorizes Supreme Court to adopt trust account overdraft

notification program for attorneys.

221 TAYLOR: Reviews bill.

>Reviews SB 220-1 amendments deleting section 2.(1), lines 7 through 12,

p.1 and inserts language which states, "Subject to the requirements of ORS 9.490, the Supreme Court may establish a trust account overdraft notification program for attorneys." (EXHIBIT I).

240 SEN. BRYANT: What are requirements of ORS 9.490?

244 GEORGE RIEMER: Reviews rules process which is cross-referenced with  
ORS 9.490.

254 SEN. SHOEMAKER: Need for emergency clause?

RIEMER: Need time to identify accounts. No problem deleting emergency clause. Want enough time to get things going.

266 SEN. SHOEMAKER: 90 days after passage might work even better?

RIEMER: Would leave enough time to notify members.

272 SEN. SHOEMAKER: Would date certain January 1, 1994 work?

278 FRANK BRAUNER, OREGON BANKERS ASSOC: Statute will be accompanied  
by administrative rules which will include an effective date.  
>Emergency clause should be dropped.  
>Date certain would be preferable but difficult to determine.

294 SEN. SHOEMAKER: October 1, 1993?

BRAUNER: Would be fine. Date certain is at the whim of the legislature.

326 CHAIR SPRINGER: What is the understanding concerning reasonable costs?

BRAUNER: Reasonable costs used elsewhere in statute.  
>This is business that banks will compete for.  
>Program will be implemented manually. This cost will not be in excess of a normal nsf.

373 CHAIR SPRINGER: What is the range for nsf.

BRAUNER: Not familiar with those charges. Perception is charges range from \$7.50 to \$15.00.

400 SEN. SHOEMAKER: Notes language is reasonable cost incurred,  
not reasonable charges.

403 BRAUNER: This is exclusively for the officers of the court and no one else.

420 CHAIR SPRINGER: Grant of immunity language, would it apply if

financial

institution reported overdraft notice to wrong entity and damages attorney?

BRAWNER: Requests clarification.

>If bank causes report to go to someone other than OSB , then sub. 4

would not provide protection as bank has clearly made a mistake.

>If two individuals have same name, bank will provide notice to OSB ,

if

OSB damages wrong individual then bank is not liable.

476 CHAIR SPRINGER: Would bank be liable for erroneous report to OSB that

is obtained by media?

TAPE 20, SIDE B

039 BRAWNER: Yes, but facts of situation must be clear.

>If disclosure is made to OSB then it is covered even if it was in error.

>If bank is complicated in notice to media and not OSB , then bank is liable.

060 SEN. SHOEMAKER: Subsection 4 not intended to excuse liability for negligence; don't see exception, where does it make distinction?

066 BRAWNER: Rights to privacy and disclosure govern bank actions.

>Proper authorizations (subpeona, etc.) must be obtained to release information.

079 SEN. SHOEMAKER: Notifying third party in error or not would not arise out of this program?

BRAWNER: Correct.

083 SEN. SHOEMAKER: Because it deals with notifying bar and account holder.

BRAWNER: Yes. Adds OSB as only recipient of notice beyond account holder only in the instance of an attorney trust account.

>Unlawful to notify anyone of account holders account status.

093 SEN. SHOEMAKER: Would it be advisable to include reference to statute in subsection 4.

BRAWNER: Believe it is already present, ORS 192.550.

109 CHAIR SPRINGER: Questions why referencing section 6 in ORS 192.550

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595?

>No answers forthcoming from witnesses.



>Holds bill to end of hearing to allow further review between counsel and witnesses.

123 RIEMER: This becomes an amendment to Financial Privacy Act. Sections are collected one section for ease of reference.  
>Effective date - 90 days or date certain would be acceptable.

SB 231: Clarifies that probation is sentence.

139 TAYLOR: Reviews bill. No amendments.

147 CHAIR SPRINGER: Aware of no amendments.  
>Recommends amending relating clause to state, "Relating to Probation".  
>More accurate statement of intent and impact.

170 SEN. SHOEMAKER: Why amend relating clause?

CHAIR SPRINGER: That or bill doesn't go anywhere.  
>Wants to avoid gut and stuff, and hijacking of bills at the end of session.

193 MOTION: SEN. HAMBY: moves to AMEND relating clause to "Relating to Probation".  
VOTE: Hearing no objection amendment is ADOPTED.

202 MOTION: SEN. HAMBY: moves SB 231 as amended be sent to the floor with a DO PASS recommendation.  
VOTE: In a roll call vote all members present vote AYE. SEN. KERANS is excused.

CHAIR SPRINGER: The motion CARRIES.

SB 220

234 CHAIR SPRINGER: Returns to consideration of SB 220.

237 FRANK BRAWNER: Recommend deletion of emergency clause.  
>As to bank liability: references right to privacy act. Bill lacks definition provision in statute (ORS 192.550).

310 GEORGE RIEMER: Bank should not be at their peril while attempting to help OSB. Provisions are similar to existing provisions which hold bank is not liable.

363 CHAIR SPRINGER: Carries bill over to work session at later date for further review.

375 TAYLOR: Reviews LC's for introduction.

LC 1269 (EXHIBIT J): Relating to indigent defense, at request of Oregon Criminal Defense Lawyers Association.

LC 2709 (EXHIBIT K): Relating to hardship income trusts, at request of United Seniors of Oregon, Oregon State Council of Senior Citizens and Oregon Citizens Coalition for Better Nursing Home Care.

LC 2107 (EXHIBIT L): Relating to judgement debtors, at request of Oregon State Bar.

LC 2109 (EXHIBIT M): Relating to homestead exemptions, at request of Oregon State Bar.

421 MOTION: CHAIR SPRINGER: Moves introduction of LC 1269, LC 2709, LC  
210 7 and LC 2109.  
>Hearing no objection, so ordered.

CHAIR SPRINGER: Adjourns hearing at 3:00pm.

Submitted by: Reviewed by:

Kirk Bailey  
Assistant

Bill Taylor  
Administrator

EXHIBIT LOG:

A - Informational Testimony - Thomas Tongue - 12 pages  
B - Informational Testimony - Thomas Tongue - 3 pages  
C - Testimony on SB 256 - Celene Greene - 3 pages  
D - Testimony on SB 256 - Celene Greene - 1 page  
E - Testimony on SB 256 - Celene Greene - 1 page  
F - Testimony on SB 217 - George Riemer - 1 page  
G - Amendments to SB 217 - Staff - 1 page  
H - Amendments to SB 219 - Staff - 1 page  
I - Amendments to SB 220 - Staff - 1 page  
J - LC 1269 - Staff - 10 pages  
K - LC 2709 - Staff - 4 pages  
L - LC 2107 - Staff - 2 pages  
M - LC 2109 - Staff - 6 pages.