

SENATE COMMITTEE ON
JUDICIARY

April 2, 1993 Hearing Room C
1:00 p.m. Tapes 82-84

MEMBERS PRESENT: Sen. Dick Springer, Chair
 Sen. Jeannette Hamby
 Sen. Bob Shoemaker
 Sen. Gordon Smith
 Sen. Catherine Webber

MEMBERS EXCUSED: Sen. Karsten Rasmussen

STAFF PRESENT: Karen Quigley, Committee Counsel
 Kirk Bailey, Committee Assistant

ISSUES DISCUSSED: Public Hearing on SB 415, SB 394, SB 307, SB 308, SB 301,
HB
252 9

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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 82, SIDE A

003 CHAIR SPRINGER: Sen. Webber opens the hearing at 1:12 pm in the absence of the Chair.

DENNIS JAMES HUBEL, CITIZEN submits written testimony only with concerns about all bills on the committee agenda (EXHIBIT G).

Public Hearing

HB 2529: Prohibits use of accident reports or records compiled by police agencies for commercial purposes.

WITNESSES:

REPRESENTATIVE AVEL GORDLY
SENATOR BILL DWYER

005 REPRESENTATIVE GORDLY: Testifies in support of the bill.
>Reviews history and effect of the bill.

040 SENATOR DWYER: Testifies in support of the bill.

050 SEN. WEBBER: Recesses hearing on HB 2529.

SB 301: Expands prohibition on use of Motor Vehicles Division
accident
reports for commercial purposes.

WITNESSES:

SENATOR BILL DWYER

RUTH LARSON, SENATE TRANSPORTATION COMMITTEE submits written testimony
only
with background information on the bill (EXHIBIT J).

053 SENATOR DWYER: Testifies in support of the bill.

088 CHAIR SPRINGER: Reconvenes on HB 2529.

HB 2529: Prohibit use of accident reports or records compiled by
police
agencies for commercial purposes.

WITNESSES:

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION
RUSS SPENCER, OREGON SHERIFF'S ASSOCIATION
JOHN STUBENVOLL, OSPERG
VALERIE PAULSON, LEAGUE OF OREGON CITIES

099 CHARLIE WILLIAMSON: Submits and reviews written testimony in support
of
SB 301 and HB 2529 on behalf of Charles Burt (EXHIBIT A).

111 SEN. HAMBY: HB 2529 does not amend ORS 192 as SB 301 does? How do
you
feel about that in light of SB 500?

WILLIAMSON: Not familiar with 500. No objection to 301.

126 JOHN STUBENVOLL: Testifies in support of SB 301.

140 VALERIE PAULSON: Testifies with reservations on SB 301.
>Concerned with how agencies determine purposes.

153 SEN. SHOEMAKER: Expresses same concern.
>Suggests possible amendment.

161 PAULSON: Indicates support.

SB 394: Requires use of computer assisted transcription by circuit
court
reporters.

WITNESSES:

CARL MYERS, COURT REPORTERS ASSOCIATION
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION
CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION
JUDGE THOMAS MOSGROVE
JUDGE ROBERT GARDNER
DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION

MARLENE BANGS, OREGON COURT REPORTERS ASSOCIATION
ERNIE MAZAROL, COURT ADMINISTRATOR
SALLY AVERA, STATE PUBLIC DEFENDER
BILL LINDEN, STATE COURT ADMINISTRATOR

VIRGINIA LINDER, SOLICITOR GENERAL submits written testimony only in support of the bill (EXHIBIT D).

179 CARL MYERS: Submits and reviews written testimony and SB
394 -1 amendments in support of the bill (EXHIBITS B & C).

272 ROSS SHEPARD: Testifies in support of the bill.
>Submits written testimony in support of the bill on behalf of James Edmonds, Oregon Association of Defense Counsel (EXHIBIT E).

293 MARLENE BANGS: Submits and reviews written testimony in support of the bill (EXHIBIT S).

368 MYERS: Reviews additional submitted testimony (EXHIBIT T).

402 CHAIR SPRINGER: Will we receive testimony from the Oregon State Bar?
MYERS: OSB has reviewed and supports.

417 CHARLES WILLIAMSON: Testifies in support of the bill.
>Avoids transcription time.

TAPE 83, SIDE A

009 JUDGE ROBERT GARDNER: Submits and reviews written testimony in opposition to the bill (EXHIBIT F).

077 JUDGE THOMAS MOSGROVE: Testifies in opposition to the bill.
>Concurs with Judge Gardner.

143 ERNIE MAZAROL: Testifies in opposition to the bill.

156 DALE PENN: Testifies in support of the bill.
>Proposed system is more accurate and avoids problems with audio systems which lead to appeal.

200 SEN. SMITH: Inquires of other members why has this failed in the past?

SEN. SHOEMAKER: Combination of economics and uncomfortableness with dictating to courts.

213 SHEPARD: Compromises were reached with court administrators and OCDLA so committee didn't have to consider.

220 PENN: Cost has been an issue in the past but can be dealt with. Choice is the important issue.

229 SEN. SHOEMAKER: Bill mandates equipment and eliminates choice?

PENN: Should be mandated because it is a good system.

238 SALLY AVERA: Testifies in support of the bill.

>Quality of audio records and transcription is generally poor in their experience.

>2nd largest consumer of transcripts.

282 BILL LINDEN: Comments in response to testimony.

>Judicial Conference believes that judges should be allowed to choose

method that works best for their court.

>System is not needed in every court in the state.

>Costs \$16,000 more per year for new system.

>Unaware of any complaints from the bench about current system.

341 SEN. SHOEMAKER: Refers to Penn's comments. What about choice?

LINDEN: Never turned down judge who wanted stenographer.

>Funding has been an issue and judges who can obtain the funds can utilize steno system. Office doesn't discourage but can't help much either.

370 SEN. SHOEMAKER: Support maintaining stenographic system for existing judge?

LINDEN: If existing judges use stenographic system we do not force them to change.

378 SEN. SHOEMAKER: Do you fund the excess?

LINDEN: Yes.

384 SEN. HAMBY: How often does audio break down or need to be replaced?

LINDEN: System upgraded when necessary and regularly maintained.

Doesn't know how often it breaks down but there have been no reported problems with equipment.

399 SEN. HAMBY: Would you accept amendment mandating any new equipment be stenographic?

LINDEN: No, every judge should have right to choose.

410 SEN. HAMBY: Believes stenographic system is necessary given testimony.

LINDEN: Could bring in anecdotes on stenographic technology. If problem existed then appeal courts would let us know.

SB 415: Prohibits court from appointing attorney to represent indigent person

unless attorney volunteers for appointment.

WITNESSES:

ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

WALTER TODD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

JUDGE THOMAS MOSGROVE

BILL LINDEN, STATE COURT ADMINISTRATOR

TAPE 82, SIDE A

016 ROSS SHEPARD: Testifies in support of the bill.
>Summarizes need and effect.

083 SENATOR NEIL BRYANT: Testifies in support of the bill on behalf of
Bruce Brothers.

120 WALTER TODD: Testifies in support of the bill.
>Reviews Brothers situation and legal/constitutional issues.
>Order is constitutional violation because it imposes involuntary
servitude.
>Risks ineffective assistance of counsel.
>Bill reflects original legislative intent of related ORS provisions.

199 CHARLIE WILLIAMSON: Testifies in support of the bill.
>Invitation to malpractice to draft some attorney's to defend in
criminal matters.
>Cannot fund government by taking the constitutional rights of lawyers
and others.

213 SEN. SHOEMAKER: Concerned about lawyers duty to society and the
effort
to avoid that in this bill.
>Troubled that OSB does not think that attorney's should volunteer?

232 WILLIAMSON: Concerned about the state compelling attorney's to
serve.
Attorney's required to serve but not submit to slavery.

250 SEN. SHOEMAKER: Attorney's shouldn't be able to turn down duty
when
they like.

265 TODD: Issue raised by attorney general's office. Summarizes history
of
tradition for indigent defense.
>There were attorney's willing to help in the Brothers case.
>Question of ineffective counsel, and conflict of interest.

295 SEN. SHOEMAKER: Is it good policy to make law based on one case?

TODD: Has anecdotal evidence to indicate this is not a single
occurrence.

303 SHEPARD: Spoke with Keith Burns and this has happened in
other
circumstances.

315 BILL LINDEN: Testifies in opposition to the bill.
>Response is too broad for problem.
>Quotes attorney oath of office.

345 SEN. SMITH: Do most Oregon attorneys have malpractice insurance
and
does it cover this?

LINDEN: Mandatory in Oregon.
>Regular public defender firms attorney's not required to purchase
Professional Liability Fund insurance but coverage from national
association.

360 SEN. SMITH: If they are not competent to handle case judge would
not
ask?

LINDEN: Correct.

363 SEN. SMITH: Are you putting attorney in situation where they may
not
have coverage?

LINDEN: Issue in Deschutes was to determine who was qualified and
controversy revolved around that issue.

379 JUDGE THOMAS MOSGROVE: Testifies in opposition to the bill.
>Summarizes Deschutes case.

TAPE 83, SIDE B

JUDGE MOSGROVE: Continues testimony in opposition.

SB 307: Requires bifurcation of all trials of claims for relief based
in
tort.

WITNESSES:

BILL WISWALL, CITIZEN
JOHN FOLAWN, OREGON ASSOCIATION OF DEFENSE COUNCIL
BILL LINDEN, JUDICIAL CONFERENCE

061 BILL WISWALL: Comments on issues in previous bill.
>Submits and reviews written testimony in support of SB 307 (EXHIBITS
H
& I).

214 JOHN FOLAWN: Submits and reviews written testimony in opposition to
the
bill (EXHIBIT L).

244 BILL LINDEN: Submits and reviews written testimony in opposition to

the
bill (EXHIBIT K).

263 SEN. SHOEMAKER: Do rules give judge discretion to bifurcate?

LINDEN: Yes.

SB 308: Mandates compulsory arbitration for specified cases in all
circuit
and district courts of state.

WITNESSES:

BILL WISWALL, CITIZEN

CHARLES CROOKHAM, THE PUBLIC INTEREST

DON PYLE, OREGON ASSOCIATION DEFENSE COUNSEL

CHARLIE WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

BILL LINDEN, JUDICIAL CONFERENCE

HELEN JAMES WILLIAMS

279 BILL WISWALL: Submits and reviews written testimony in support of
the
bill (EXHIBITS M, N, O & P).

271 SEN. SHOEMAKER: What was the reason for cancelling court's
discretion
to remove from arbitration?

WISWALL: Can't see reason to discretionarily remove case from
arbitration for case under \$25,000. No objection to serene statement.

385 CHAIR SPRINGER: Introduces LC 3325.

MOTION: Moves to introduce LC 3325, at the request of Oregon Financial
Services Association.

VOTE: Hearing no objection the motion carries.

394 JUDGE CHARLES CROOKHAM: Testifies in support of the bill.

484 SEN. SHOEMAKER: View of removing discretionary provision?

TAPE 84, SIDE A

030 CROOKHAM: Could be occasions where inappropriate. Concur
with
Wiswall.

034 SEN. SHOEMAKER: Would requiring arbitration effect mediation?

CROOKHAM: Nothing in this system to prevent mediation.

041 SEN. SHOEMAKER: You regard it inappropriate to order mediation?

CROOKHAM: Would avoid if possible. Arbitration is appropriate.

049 CLYDE VELLER: Testifies in opposition to the bill.

086 ROBERT MILLER: Testifies in support of the bill.

120 DON PYLE: Submits and reviews written testimony in opposition to
the

bill (EXHIBIT R).

197 HELENJANE WILLIAMS: Submits and reviews written testimony in
opposition
to the bill (EXHIBIT Q).

230 CHARLIE WILLIAMSON: Testifies in support of the bill.
>Trial lawyers are pleased with how system works.

246 BILL LINDEN: Testifies in support of the bill.
>Judicial Conference supports generally.
>Would like to retain discretionary language.

260 CHAIR SPRINGER: Adjourns hearing at 3:23 pm.

Submitted by:

Reviewed by:

Kirk Bailey
Assistant

Karen Quigley
Administrator

EXHIBIT LOG:

A - Testimony on SB 301/HB 2529, Charlie Williams, 25 pages
B - Amendments to SB 394, 1 page
C - Testimony on SB 394, Carl Myers, 12 pages
D - Testimony on SB 394, Virginia Linder, packet
E - Testimony on SB 394, Ross Shepard, 2 pages
F - Testimony on SB 394, Robert Gardner, 9 pages
G - Testimony on SB 301, David Hubel, 4 pages
H - Testimony on SB 307, Bill Wiswall, 13 pages
I - Testimony on SB 307, Bill Wiswall, 5 pages
J - Testimony on SB 301, Ruth Larson, 3 pages
K - Testimony on SB 307, Bill Linden, 2 pages
L - Testimony on SB 307, John Folawn, 6 pages
M - Amendments to SB 308, Bill Wiswall, 1 page
N - Testimony on SB 308, Bill Wiswall, 1 page
O - Testimony on SB 308, Bill Wiswall, 1 page
P - Testimony on SB 308, Bill Wiswall, 1 page
Q - Testimony on SB 308, Helenjane Williams, 1 page
R - Testimony on SB 308, Don Pyle, 6 pages
S - Testimony on SB 394, Marlene Bangs, 80 pages
T - Testimony on SB 394, Marlene Bangs, book.