

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.

HOUSE COMMITTEE ON JUDICIARY SUBCOMMITTEE ON CRIME AND CORRECTIONS

June 12, 1991Hearing Room 357 1:00 p.m.Tapes 123 - 124

MEMBERS PRESENT:Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Del Parks Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Tom Mason

VISITING MEMBER:Sen. Jeannette Hamby, District 5

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant

MEASURES CONSIDERED:SB 882 PH (Probation Violations) SB 718 PH (Maximum Speed Limit Violations) SB 637 PH (Unlawful Sound Recordings) SB 808 PH (Hearing Motions for New Trials) HB 3589 WS (Prohibits Candidate to Candidate Contributions)

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TAPE 124, SIDE A

002 CHAIR MILLER: Opens Subcommittee on Criminal Law and Corrections at 1:40 p.m. Opens a public hearing on SB 808.

SB 808 - PUBLIC HEARING Witnesses:Walter Todd, Private Attorney Donna Grund-Slepack Sen. Hamby, District 5 Bill Drew

008 GREG CHAIMOV: Reviews SB 808. *Extends from 5 to 10 days the time for a criminal defendant to move for a new trial except in circumstances of finding new evidence; then the criminal defendant gets 6 months from the entry of judgement to move for a new trial. *Brings attention to Senate vote on the bill (EXHIBIT A).

017 REP. BAUM: Asks counsel if there has been any correspondence from Counsel and Court Procedures.

021 GREG CHAIMOV: Says there has been none.

031 WALTER TODD, VICE PRESIDENT OF OCDLA: In support of SB 808 with the

possible exception of the 6-month cap. *Our position is that the current law does not provide for remedies in situations of newly discovered evidence. *Suggests amendment based on opposition: Oppositions' concern is that flood gates would be opened for motions filed by inmates within 6 months. This body could amend this and indicate that no court-appointed counsel would need to be appointed for a newly-discovered motion. *Courts have always held, and will continue to hold, that new evidence would still have to show that it would change the result of the trial and that it could not have been discovered by counsel before trial using due diligence. *This simply gives an inmate who might have been wrongfully convicted more time to get evidence before a tribunal.

061 SEN. HAMBY: Refers to the Oregon Rules of Civil Procedure (EXHIBIT B). Reviews where other states are on this issue. Although the 6-month cap could stand to be extended, at least it is better than where we stand now. Urges support of SB 808 and consideration of extending the 6-month cap.

083 CHAIR MILLER: Asks SEN. HAMBY if she has comments on the amendments discussed by TODD. No further comments.

094 DONNA GRUND-SLEPACK: Gives testimony in support of SB 808, based on the Santiago Ventura Morales case (EXHIBIT C).

190 BILL DREW, STAFF, SEN. HAMBY: Emphasizes that Santiago Ventura Morales is not the primary reason for the bill. *We have a deadline of 5 days for a new trial based on new evidence. We know that new evidence has to be material to the trial or case and it couldn't be discovered after due diligence before the trial. Five days is not long enough. Other states have longer limits for good reason. We're trying to make it fair to those who might have new evidence. *If you don't believe that new evidence is a good cause for a new trial, then the law may as well remain because no one could meet those criteria anyway. If you do believe there is cause for new trial, we suggest that you extend the deadline to 6 months.

215 CHAIR MILLER: Recesses the public hearing on SB 808. Opens public hearing on SB 882.

SB 882 - PUBLIC HEARING Witnesses: Elyse Clawson, Dept. of Corrections
Jeff Van Valkenburgh, AAG

220 GREG CHAIMOV: Explains SB 882. *Under current law, probation officers must report all probation violations. *Brings attention to the Court of Appeals case (EXHIBIT E). *Bill makes reporting violations discretionary and dovetails with HB 3520 which this committee passed out--grants immunity to probation officers for their discretionary acts. *Refers to Senate vote, current probation statutes (EXHIBIT E) and says that pertinent language in the bill is found on Page 3, lines 18-20 of the bill.

239 ELYSE CLAWSON, DEPARTMENT OF CORRECTIONS: Speaks in support of SB 882 with proposed amendments (EXHIBIT G).

288 JEFF VAN VALKENBURGH: Drafted the bill and is here to answer questions on the bill.

292 CLAWSON: Suggests adding additional amendments from General Services

to the bill (EXHIBIT F).

297 REP. MANNIX: Those amendments relate to a transfer of some community corrections activities to local government. *Designed to save some money--state would have excess vehicles to lease to local government rather than buying new ones. *Looking for some bill to attach it do.

317 CLAWSON: Suggests language change to the General Services amendments (EXHIBIT F). *Instead of saying "parole and probation units," I would recommend "public agency assuming responsibility for parole and probation services under the community correction statute--ORS 423 .500." That clearly designates what we're talking about and allows for counties to take over leases of vehicles through intergovernmental agreement.

351 REP. MANNIX: Suggests that the amendments be modified because they might be beyond the relating clause; they might be modified to give this kind of authority to General Services in the area of corrections.

358 CLAWSON: Yes. We're only interested in the piece having to do with community corrections.

362 REP. MANNIX: Recommends to counsel to word to give limited authority in the area of corrections so as not to violate the relating clause.

369 CHAIR MILLER: Closes public hearing on SB 882 and re-opens public hearing on SB 808.

SB 808 - REOPEN PUBLIC HEARING Witnesses:Dale Penn, Oregon District Attorneys Association

372 CHAIR MILLER: Explains that the public hearing on SB 808 has been held and was recessed for DALE PENN's input.

376 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: Has no problem with the concept of this bill. *Is difficult to come up with circumstances where the law is really necessary. *Concerned about the possibility of major abuse.

388 REP. MANNIX: Asks for estimate on the number of yearly criminal convictions in Oregon.

390 PENN: Believes about 10,000 felony convictions occur per year statewide.

395 REP. MANNIX: Asks how many times cases come up where new evidence develops under current standards--where there's a new trial for new evidence.

402 PENN: Replies that this rarely comes up. Cannot think of a time in his 15-year experience in Marion County where that has been an issue. *We're talking about an extremely rare situation; that's my problem with the bill. There are procedures available and justice is done. *My problem with changing statute is that inmates who are given corrections division sentences construct many different ways to abuse the system. *Afraid that this becomes a new toy for jail house lawyers inside the corrections division. *I don't see a large number of cases where this needs to occur and I see the need to have finality of conviction and allow the clemency process to run its course.

TAPE 124, SIDE A

023 REP. MANNIX: What is the scope of habeas corpus relief that's presently available, separate from post-conviction relief?

027 PENN: Is not an expert on habeas corpus.

028 REP. MANNIX: Clarifies that it is the relief that is ultimately available to anyone who says "I am unlawfully incarcerated."

029 PENN: That is always available and is available in the federal courts.

030 REP. MANNIX: Understands that habeas corpus allows for wrongfully convicted persons to give evidence as to how.

033 PENN: Yes, and that' the normal course. You go through the trial court, the appeals, post- conviction, then habeas corpus.

037 CHAIR MILLER: Closes the public hearing on SB 808. Opens public hearing on SB 718.

SB 718 - PUBLIC HEARING Witnesses: Susan Schneider, City of Portland
Linda Dartsch, City of Portland Richard N. Ross, Transportation Planner,
City of Gresham Dwayne Hofstetter

041 GREG CHAIMOV: Explains SB 718. *Under current law, maximum statutory speed limit on residential streets in urban areas; suggested speeds have been difficult to enforce. *Bill creates maximum limits for all urban streets except state highways. *Refers to copy of Senate vote/basic speed rule and suggested speed statutes (EXHIBIT H).

061 SUSAN SCHNEIDER, CITY OF PORTLAND: Speaks in support of SB 718; she has letters in support of SB 718.

066 LINDA DARTSCH, CITY OF PORTLAND: Begins testimony in support of SB 718 (EXHIBIT I).

079 REP. JOHNSON: I'd like to inquire--when you say that more than half of your drivers speed, I suggest that maybe the posted speed is lower than what it should be.

087 DARTSCH: There may be streets that need to be re-evaluated. When I say speed, I mean exceeding the posted speed limit which is not necessarily violating the basic speed rule.

091 REP. BAUMAN: When the public concern turns from issues like drugs and safety to traffic speed, times must be "better" now for Portland.

107 DARTSCH: We don't bounce the guns around out the windows while we're speeding on our streets.

109 REP. PARKS: Commends City of Portland for making legislative recognition for this but what necessarily works in the City of Portland isn't a good law for all the rural areas of the state. Asks about Subsection 2(1)(e), referring to rural areas. Would like to propose that as an amendment; doesn't see any distinction that should be made between rural interstate highways, whether it's in a metropolitan area or not.

130 DARTSCH: Continues with testimony (EXHIBIT I).

155 REP. BAUMAN: Asks for restatement of the basic speed rule.

157 DARTSCH: The driver must drive at a speed that is safe and prudent under existing roadway and weather conditions.

160 REP. BAUMAN: Then, immediately following that, you say that the speed is interpreted as being about 10 miles per hour over the posted speed limit--a speed which is likely unsafe. If it's not safe, then it violates the basic speed rule. Explain why it is that a speed which is not safe does not violate the basic speed rule.

170 DARTSCH: It is difficult to define safe; it is difficult for judges to make that determination. *We have documentation that shows that over half the vehicles are exceeding the posted speed limits and that, in my city, there are 12-15,000 accidents where speed is a significant contributing factor.

178 REP. BAUMAN: Asks for number of speed citations--exceeding maximum speed or violation of basic speed rule--that are overturned by judges on the basis of a basic speed rule defense

183 DARTSCH: Not familiar with those statistics. I do know that police officers, because of their experience in the court, will seldom write a ticket for less than 15 miles-per-hour based on their experience.

190 SCHNEIDER: Asks REP. PARKS to repeat question on Section 2--rural areas.

194 REP. PARKS: Wants something in the bill for areas other than Portland.

205 RICHARD ROSS, TRANSPORTATION PLANNER, CITY OF GRESHAM: Supports SB 718 --has same concerns as Portland residents regarding speeding traffic. City Council has placed the maximum speed law as top priority in transportation legislation. *Agrees with reasons for this bill. *Increasing local traffic problems caused by rapid growth and, at the same time, reduced traffic enforcement because police resources are being pulled by serious crime and fiscal constraints. *Talks about recent new traffic management approaches tried to address the problem (EXHIBIT J). Need better enforcement tools to have more cost effective response to growing traffic problems.

226 CHAIR MILLER: Of the people who get cited out in Gresham, how many come in and contest that they were violating the basic rule.

229 ROSS: Doesn't know the number. From our standpoint, we get a lot of complaints about speeding traffic on those streets which are not posted 25 miles per hour but are in that in-between zone and are full of residences and schools.

247 CHAIR MILLER: Gives personal example--was cited for speeding was in his district and decided to go to court. The preceding witnesses testified that they had gone to the traffic engineer--it was in a residential area but was on a real wide street. The average speed there was 39 miles-per-hour. Wonders if they might be creating discomfort among citizens if they post 25 miles-per-hour in all the urban areas.

283 ROSS: The bill's intent is not to put it at 25 mph but simply to make the speed limit stick where it is posted. Our problem is that

we've had no traffic control unit due to budget/crime constraints.

292 SCHNEIDER: Confirms that a city-wide 25 mph posting is not their intent but to have the posted speed be the limit. We do have trouble enforcing; when we did take action in the 25 mph areas, it helped.

304 REP. PARKS: Section 2 only affects the Metro county. The definition states "upon a highway in any city or upon a highway within an urban growth boundary...in a county with a population greater than 100,000..." That is clearly Portland, but "any city" would cover La Grande, because that is a "city."

314 SCHNEIDER: Intent of the bill was to apply in cities within urban growth boundaries only in counties over 100,000.

322 GREG CHAIMOV: That is how I read the bill. It would not cover La Grande but it would cover some small city in Multnomah or Marion or Jackson County.

332 REP. JOHNSON: This Section 2 seems to be the same as ORS 811.105. Is there much that is new in Section 2?

339 SCHNEIDER: No. Only intended to make it clear that set speed limits apply both to the limits established by the Speed Control Board that are not posted and to those that are. Intent is not to change the speeds or to change the process. 346 REP. JOHNSON: Both the statutes in your bill refer to rural interstate highways; we think of the freeway system when we think of interstates. Is that accurate or are there other roads that are considered interstates?

356 DARTSCH: Interstate system is the national interstate system: I-5, I-205, I-405, I-84. There are other state highways that do not fall under the federal maximum speed rules.

363 REP. JOHNSON: Didn't see it defined in bill; wanted to clarify.

366 SCHNEIDER: It is not our intention to apply this to interstates.

369 CHAIR MILLER: Recesses the public hearing on SB 718. Opens a work session on HB 3589.

HB 3589 - WORK SESSION

376 CHAIR MILLER: HB 2490 dealt with campaign funds. This bill extends those credits to contributions to candidates and parties. The only issue of contention is whether or not to also extend the credit to groups supporting or opposing measures that have qualified for the ballot.

392 MOTION, REP. PARKS: Moves amendment to include groups that support or oppose measures.

394 REP. JOHNSON: Do those people already have a right to a tax credit?

395 CHAIR MILLER: Yes.

396 REP. JOHNSON: Are we just reinstating money that has been taken out?

397 CHAIR MILLER: We're repealing it and then showing a few "cracks" in the repeal.

402 REP. JOHNSON: Under current law, do those people who are supporting ballot measures that have qualified for placement on the ballot qualify for tax credit?

405 CHAIR MILLER: Yes.

408 REP. JOHNSON: Do you have any idea of what the amount is that is lost to the State Treasury because of these ballot measures?

411 CHAIR MILLER: Those numbers are hard to get a hold of. The original estimation of the political tax credit totally was \$5 million. When a fiscal was put on it that reduced it for all parties and candidates, they said all we'd get out of it was \$1.7 million because fiscal assumes that people would shift to those receiving the tax credit.

430 RANDY JONES, ADMINISTRATOR, HOUSE STATE AND FEDERAL AFFAIRS COMMITTEE: What you're asking about is to maintain the deletion from line 38-43 and to reinsert the line 44 on page 4?

TAPE 123, SIDE B

011 CHAIR MILLER: We'll work on it conceptually. What we're talking about is that only those qualified for the ballot will receive tax credit plus parties of candidates.

013 No objection. Motion passes.

014 MOTION, REP. JOHNSON: Moves HB 3589 to the full committee, do pass.

015 VOTE: Motion

AYE: REP. BAUM, REP. JOHNSON, REP. PARKS, REP. SUNSERI, CHAIR MILLER.
NO: EXCUSED: REP. BAUMAN, REP. BRIAN, REP. MASON.

019 CHAIR MILLER: Re-opens public hearing on SB 718.

SB 718 - PUBLIC HEARING

021 REP. PARKS and CHAIR MILLER begin debating whether Hwy 97 is a state highway or not.

026 DARTSCH: Any highway that has a number--other than interstates--is a state highway.

027 REP. PARKS: So they're either an interstate or a state highway and they're nothing else.

029 DWAYNE HOFSTETTER, TRAFFIC ENGINEER, HIGHWAY DIVISION: Not all highways that have state routes on them are necessarily state highways. They may have a route number and be a county road. The only ones that are interstates have interstate route numbers on them.

037 REP. PARKS: Is there any way you can describe Hwy 97?

038 HOFSTETTER: That has a U.S. route number on it; that route goes into other states other than Oregon. U.S. 97 is also a state highway.

040 REP. PARKS: What would the generic term be?

042 HOFSTETTER: It is a state primary highway.

043 REP. PARKS: Would 212 be a state primary highway?

044 HOFSTETTER: Hwy 212 is a state highway--just a state route, not a U.S. route.

046 REP. PARKS: And the state has the right to regulate the speed on any highway--even the interstates?

047 HOFSTETTER: That's partially true. The state Speed Control Board regulates speed on all city streets, county roads and state highways within cities. Rural state highways are under speed zoning jurisdiction of the Oregon Transportation Commission. The federal government also has rules/laws that are imposed on us, such as the 55 mph maximum on rural roads other than the rural interstate.

055 REP. PARKS: So we don't have the right to set the speed on Hwy 97?

057 HOFSTETTER: Yes, except we would have the right to set the speed if it was lower than 55 mph.

061 CHAIR MILLER: In discussions I was involved in with the state about changing speeds, other states admitted to having speeds that averaged more than 55 mph and there were no penalties-- maybe some but it wasn't significant. Finally they realized that it wasn't a threat to life to drive 60 mph. They (federal government) wouldn't like it but we could do that.

079 HOFSTETTER: You are correct; there are about 3 states that currently may be in trouble of losing some federal funds as a result of too many drivers exceeding the 55 mph. This is a problem where there are many urban interstates.

082 CHAIR MILLER and HOFSTETTER further discuss setting standards for requiring highways to be considered federal interstates. MILLER suggests saying that 55 mph is recommended but that 65 mph is not inherently dangerous.

108 REP. JOHNSON: The main thing this bill does is take away prima facia evidence a person who had violated posted speeds could use in defense.

119 DARTSCH: Yes. The intent is to change that--so that it's not so hard to prove that people had violated the speed.

123 JOHNSON: So the majority of people that your first witness referred to wouldn't be able to come in and say, "Seventy-five percent of us say that 45 mph is great even though the speed limit is posted at 25 mph."

126 DARTSCH: At 25 mph, they can't make the argument now; that change was made last session. But for speeds over that--yes.

130 CHAIR MILLER: Closes the public hearing on SB 718. Opens a public hearing on SB 637.

SB 637 - PUBLIC HEARING Witnesses:Ralph Vaughan, Recording Industry Association of America, Washington, D.C.

136 GREG CHAIMOV: Explains SB 637. *Modernizes the bootlegging laws. Oregon law currently prevents copying from a master recording or video; federal law prohibits counterfeiting and this bill fills the gaps by stopping the taping of live performances and mislabeling the manufacturer of a video or sound recording. *Brings attention to Senate vote, explanation of the bill from proponents and copies of the applicable state and federal laws (EXHIBIT K).

143 RALPH VAUGHAN, RECORDING INDUSTRY ASSOCIATION OF AMERICA, WASHINGTON, D.C.: We represent all the major sound recording companies; some of our major labels are RCA, Capitol, CBS, A&M, Motown, Warner Bros. Essentially, we represent approximately 90% of all of the sound recording companies. *We are getting killed in the state of Oregon with sound piracy. Oregon has turned into one of the largest retail markets of illicit sound recordings in the U.S.

183 CHAIR MILLER: Asks if these places are legitimate looking.

186 VAUGHAN: Yes. Some retail but sell illicit sound recordings as a profit-making enterprise.

189 CHAIR MILLER: Could we tell the difference?

190 VAUGHAN: Yes. The illegal ones--the ones you can't get easily--will sell up to \$70 per disc. Legitimate sound recordings will sell from \$1-15.

203 REP. PARKS: Doesn't understand that logic.

204 VAUGHAN: The ones that are most expensive are those recordings that you can't get in any other format. For example, at the state fair--guest artists perform and these people make illegal recordings. *Fair Use Doctrine--you have the right to do what a fair use of that recording would be. *We are talking specifically about people that are in business to make illegal recordings. *Categories not addresses in Oregon: (1) live performance; and (2) counterfeiting restricted to cassette tapes. SB 637 would protect these. *We have met with Oregon State Bar Association and drafted this with them so that it would not infringe upon the patent and trademark issues involved because of the heavy software industry in this state.

256 REP. PARKS and VAUGHAN discuss VAUGHAN's previous experience with observing these operations with various Oregon police and the need for SB 637 to regulate them. VAUGHAN explains that the Oregon statute only protects sound recordings that were originally manufactured prior to 1972 and they need something that protects recordings prior.

279 REP. BRIAN and VAUGHAN discuss lip-syncing. VAUGHAN believes there should be a disclosure on lip-syncing; cannot control what artist does in live performances. REP. BRIAN feels disclosures should be made before the concerts so that people don't feel cheated. VAUGHAN agrees; people could demand their money back.

334 VAUGHAN and CHAIR MILLER address the topic of artists owning their own recordings. VAUGHAN says that they would be affected as well as the companies that they contract with; most artists belong to his association.

359 CHAIR MILLER asks why Oregon would be pirating so much as opposed to other areas.

365 VAUGHAN explains that when statutes throughout the U.S. were written, formats such as cassette tape and terms such as high-speed duplication were totally unknown to the general public; 1972 was when the original statute came into being. *Since then, sound recording has exploded with home recorders and multiple recorders; because of the explosion and the ability to make these recordings the abuse takes place *It's not a very complicated process to operate an illegal tape duplicating business. *We have made several seizures of those operations using the FBI and some local enforcement authorities here in the state of Oregon in the past; we're currently investigating others that are operating. *We believe the manufacturing capacity of the illegal duplicators in the state of Oregon to be over 100,000 per week.

394 CHAIR MILLER: Is it permissible to tape concerts for your own private use?

397 VAUGHAN: Depending on the artist, or relationship that the artist has with the record company and other arrangements they may have with night clubs or state fairs. SB 637 specifically dictates that the performer and/or record company makes that decision.

410 CHAIR MILLER: Is it the custom to not allow it though?

416 REP. BRIAN: In most performances, cameras and tape players are prohibited.

421 VAUGHAN: One of the problems is that many large stadiums are equipped with their own replay cable TV systems. If there is a private cable TV circuit set up then a person in the sky box can tap into the entire camera and sound system of a live performance.

TAPE 124, SIDE B

006 CHAIR MILLER: Closes the public hearing on SB 637. Adjourns the meeting at 3:05 p.m.

Transcribed by: Reviewed by:

Darcie Jackson

Office Manager

EXHIBIT LOG:

A -SB 808--Senate Vote and Associated Laws - Staff - 4 pages B -SB 808 - Motions For New Trials & Info - Sen. Hamby - 8 pages C -Testimony in favor of SB 808 - Dr. Donna Grund-Slepack - 3 pages D -News Article on Habeas Corpus - Submitted for the Record - 1 page E -SB 882--Senate Vote and Associated Laws - Staff - 14 pages F -Suggested Amendments to Senate Bill 882 - Submitted for the Record - 1 page G -Testimony in favor of SB 882 - Elyse Clawson - 1 page H -SB 718--Senate Vote and Associated Laws - Staff - 4 pages I -Testimony in favor of SB 718 - Linda Dartsch - 6 pages J -City of Gresham Traffic Safety Pamphlets (2) - Richard Ross - 14 pages K -SB 637--Senate Vote and Associated Laws - Staff - 17 pages

