

- - HOUSE COMMITTEE ON JUDICIARY

January 15, 1991 Hearing Room 357 1:00 p.m. Tapes 1-3

MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair
Rep. Ray Baum Rep. Judith Bauman Rep. Marie Bell Rep. Tom Brian Rep.
Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep.
Del Parks Rep. Ron Sunseri

STAFF PRESENT: Greg Chaimov, Committee Counsel Holly Robinson,
Committee Counsel Jeff Steve, Committee Assistant WITNESSES: The
Honorable Edwin J. Peterson, Chief Justice, Oregon Supreme Court Bill
Linden, State Court Administrator The Honorable Dave Frohnmeyer Attorney
General, State of Oregon Fred B. Pearce, Director, Department of
Corrections Bob Oleson and Carl Myers, Oregon State Bar Association (OSB
A) Dale Penn, Oregon District Attorneys Association (ODAA) John Potter,
Oregon Criminal Defense Lawyers Association (OCDLA). Lawrence Wobbrok
and Charles Williamson, Oregon Trial Lawyers Association (OTLA) 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 January 15, 1991 - Page
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003 CHAIR MILLER: Calls meeting to order and sets out order of business
for the hearing. Members introduce themselves.

214 CHAIR MILLER: Last session we had three counsel. Now we have two
due to their outstanding abilities. The other counsel position was cut
due to the creation of two new committees that needed counsel. -In the
last several sessions over 400 bills have gone through the House
Judiciary Committee. That equates to approximately 25% of all action in
the legislature. We make a substantial contribution to this assembly.
-Comments are invited with respect to running the committee better.
-Secondly, this committee will make a strong attempt to start on time at
1:00 P.M. -With respect to the dress code . . .

299 REP. JOHNSON: Will pink shirts be the standard attire for men on
the committee? Followed by sincere discussion.

321 MOTION: Rep. Mason moves to adopt proposed committee rules dated
January 15, 1991. See EXHIBIT A. 367 CHAIR MILLER: Our full committee
meetings scheduled from 1-2 pm on Fridays are an opportunity to endorse
the work of the subcommittees. It is not a time to amend legislation.

385 JEFF STEVE/CLERK: Calls roll 390 VOTE: Motion passes 12-0.

396 ROBINSON: Discusses briefly the nature of the sub and full
committee meetings. This Friday will be a joint meeting with the Senate
Judiciary Committee to discuss the impacts of measure 5 on court
administration in general and a presentation by participants of the Sex
Offender Task Force.

435 INFORMATIONAL HEARING, IMPACT OF MEASURE S ON STATE COURT SYSTEM

TAPE 2, SIDE A

006 CHIEF JUSTICE PETERSON: Describes Oregon Supreme Court's package. -
First, especially in light of the incident in Clackamas County yesterday
there is a growing concern in the judicial department of a lack of
security in the state courtroom. (The justice refers to an incident in a

Clackamas County Courtroom where, after the

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judge found the defendant guilty, the defendant obtained a gun, threatened people in the courtroom before turning the gun on himself, killing himself.) A number of similar instances have occurred in courtrooms over the years. The Court's concern extends to the general safety of persons in the courtroom which includes substances brought in as evidence. The Court has been investigating this issue for a number of years and will present a comprehensive bill covering the whole spectrum of courtroom security. -Describes additional legislation to: -Improve the indigent verification program. -Transfer the responsibility for the administration of the indigent defense program out of the judicial department. -Address the unitary assessment system. -Limit the scope of review in the court of appeals of certain appeals. In particular, to repeal de novo review in domestic relations cases. -Limit the scope of review of appeals from tax court. -Allow six person juries in state civil proceedings instead of twelve. Streamline the contempt law. Over 90% of the habeas corpus petitions are patently lacking in merit. The effect of the new legislation would do away with some of the needless court appearances. (The writ of habeas corpus requires someone who has the body of another to produce that body if the person is holding the other illegally.)

160 MANNIX: De novo review means review anew on the record. The judges have to reread the transcript and look at the exhibits and retry the case. .. 166 CHIEF JUSTICE: Two other things. The Court is going to: -Seek legislation requiring the evidence code to be followed in Judicial Fitness Commission proceedings. The Judicial Fitness Commission is a totally independent body charged with responsibility of making recommendations to the Supreme Court concerning the discipline of judges. -Seek amendments to the judges retirement law. There are essentially five requests that we are making. -Reduction of the retirement age to age 60 -Change the base on which the retirement benefits are calculated -Improve the retirement benefits for the spouses of deceased judges Change the accrual rate -Grant judges the same buy-in provisions regarding judicial retirement as members of PERS have for PERS retirement. -Further comments: -There is no carrot to induce government to run as efficient as it can be. The courts have a similar problem. There should be some form of reward to be handed out to courts who make an attempt to work more efficiently. -There is growing concern about the wide spread disparity of charging practices of spread disparity of charging practices of DA's from jurisdiction to jurisdiction. This has a negative impact in some cases on DA's from jurisdiction to jurisdiction. This has a negative impact in some cases on the indigent defense dollar. -The Court is also very interested in a bill Rep. Mason is introducing which would House Committee on Judiciary January 15, 1991 - Page 4

expedite the plea process in indigent defense cases. The bill would not compromise or limit the rights of those charged with a crime. 252 MASON: The bill is not quite done yet, but we are working on it. It would reduce the case load by about 5% immediately. 263 CLARK: Can you run us up to speed on the Indigent Defense Task Force.

272 BILL LINDEN, STATE COURT ADMINISTRATOR: The draft report should be out sometime this month. There will be a variety of recommendations made. One of the primary ones is that an independent commission should be set up to administer indigent defense. 293 EDMUNSON: What is the status on the government actions bill? 295 CHIEF JUSTICE: For the last three sessions, a bill has been introduced to streamline the judicial review of acts of local government. The review process has been a morass for years. That bill is again being introduced. 310 CHAIR MILLER: We are still appreciative of the fact that you, Mr. Chief Justice, swore us in. 340 DAVE FROHNMEYER, OREGON ATTORNEY GENERAL: Introduces the next Deputy Attorney General Jack Landau. -It is our pleasure to be before this body, indeed the busiest body in state legislature. -The Department will appear before you in one of three capacities. First, we may appear to testify on behalf of some measure before you and to provide any information the committee would like. Second, we may appear as a representative of a state agency. Our role here is to assist the agency in the presentation of the agency's position and not the views of the Department of Justice. Third, we may appear as advocate pertaining to legislation which specifically affects the Department. Fourth, you may see us when any member of Congress is being sued, or has been subpoenaed. -I would like to remind you of a caveat. Article 15, section 7 prohibits legislators from suing the state for monetary damages. In the past legislators have forgotten this provision to their own embarrassment.

TAPE 1, SIDE B 040 FROHNMEYER: Describes the general financial state of the Department of Justice.

062 FROHNMEYER: We have precession filed measures on the Senate side dealing largely with child support enforcement which is the largest single function in terms of personnel performed by the Department of Justice. -With respect to the impact of measure 5 on the justice system, I have asked our legal

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counsel and staff to come up with proposals, not only for the internal management of the Department, but any law changes, that might be made that have the following effect: first, cut the intake in the work load of the Department of Justice, or other agencies of state government; second, speed up the resolution of disputes, or equalize the burdens that may fall upon the state and not on private parties; third, generate new revenue and streamline other operations of government. We have come up with approximately 100 ideas, many of which the Department will ask this committee to introduce as committee bills. -We are here to help in any capacity that we can.

113 REP. CLARK: Praises for Jack Landau.

118 REP. BAUMAN: Praises for Jack Landau.

122 REP. MANNIX: Praises for Jack Landau.

134 FRED PEARCE/ DIRECTOR OF DEPARTMENT OF CORRECTIONS -I would like to give you an update on some of the important issues that the Department is dealing with now and will be in the next biennium. -We have about

2,200 employees, operate 31 field offices per [Unintelligible] probation. We have 13 prison facilities, soon to be 14 around the state; one maximum security; 5 medium security; 7 minimum security facilities. -As of today we have 6,370 beds that are on-line and for the first time in many years we only have 6,300 inmates. -Since the last legislative session we have expanded the Powder River facility with 158 new beds; Sutter Creek Correctional facility in Coos County with 200 new beds; Columbia River Correctional Institution in Portland with 400 new beds; the Eastern Oregon Correctional institute in Pendleton expanded to 1,600 medium security beds. -We currently have under construction the intensive management unit at the Oregon State Penitentiary. That is a super-maximum security unit built inside the walls with 196 beds to open in May. Lastly, we have the Snake River Correctional facility in Ontario with a total of 650 beds, mostly medium, which will bring by July of this year, the end of this biennium, a total number of beds for our use of 7,214. -We have 34,000 individuals who are under supervision, on parole, or probation. I think that is a number you need to keep in mind particularly in light of our having to make recommended budget cuts. This will reduce our ability even more to supervise the parole and probation. We currently have about 18,000 that are what we call, "case banked." They are not getting any supervision of any kind. That will increase considerably. -With respect to the proposed budget cuts, we would reduce the community corrections enhancement funding by 10%, or \$2.2 million. We would eliminate 75 % of misdemeanor probation. We would only supervise assaults and sex crimes. We would reduce parole and probation by 20%, or \$1.7 million. The governor's proposal is to staff the Snake River facility and rent out sufficient beds to realize a revenue of \$27.5

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million for the biennium. We believe that would require using 500 of the 648 beds. Those are the \$35 million dollars in cuts that we have to look forward to.

290 CHAIR MILLER: You said 34,000 individuals are on parole and probation and the 18,000 case banked is a part of that 34,000 and not in addition? 293 MR. PEARCE: That is correct. Over half, or nearly half of the cases are case banked. 295 CHAIR MILLER: What was the number of inmates paroled 10 years ago? 297 MR. PEARCE: Fifteen years ago we had about 6,200 on parole and probation. In 1987 we had about 4,000 in our prisons and now we have about 6,300. 305 CHAIR MILLER: In a brief review of some of the bar graphs located in the papers dealing with budget cuts and amount of funds being restrained it seemed that supervision of inmates was low on the totem poll. Will this bring about danger to the public? 315 MR. PEARCE: I'm not prepared to say that their safety is in some peril, but I think it is a public safety issue because peril can be something very small, or very large. Tomorrow we could have someone out on parole or probation commit some horrendous crime. We know that it has happened in the past, with or without supervision. It certainly is more difficult to keep track of those people that the courts and the parole boards have placed under our supervision given this budget and even with what we had before that. It was our intent and our initiative prior to passage of measure 5 to make this a session in which we beefed up our parole and probation. We are unable to do that. We have grown close to 8,000 on parole and probation

in a year. Part of that is the change in the initiative that required parole to be extended for three years. So we are seeing people remaining on parole longer, consequently the case load goes up. The longer people are on parole the more they're liable to return to prison for a parole violation than perhaps they would return to prison for a new crime. Fifty-three percent of those who go on parole return to prison within three years in this state. We had planned to attack that in this legislative session with more programs and more supervision. 347REP.

BRIAN: What is the state of the uniform functional literacy program?

355 MR. PEARCE: There was a statute passed requiring that position, but the Ways and Means Committee failed to fund it. We did not get the budgeted position. However, in the middle of the biennium I made an acting director of corrections/education. We have been working towards having a program which we sent to the leadership as required by statute for everyone to be engaged in educational work or programs so that we don't have the idleness. -We are providing functional education in all our major prisons at the present time. House Committee on Judiciary January 15, 1991 - Page 7

378 REP. MASON: What about the facility in the Snake River area and renting beds out? Who would be our renters?

384 MR. PEARCE: My preliminary contacts have been with the federal government, U.S. Bureau of Prisons. They are very interested in renting the beds. I received a call from a member of the Connecticut legislative staff today who indicated some interest in our proposal to rent out beds. I don't think it would be a major problem to rent the beds out.

403 REP. MASON: What are the basic economics? How much do we rent out the facilities for?

405 MR. PEARCE: If we got seventy dollars a bed we could rent out 500 beds and make the \$27.5 million which we are required to make up under the governor's budget. That would allow us to use 150 beds for ourselves.

414 REP. CLARK: What does it cost to operate a medium security bed per year?

419 MR. PEARCE: About \$15,000. a year. I can provide you with a follow up list of the costs of each of the institutions. 429 REP. JOHNSON: How long would these beds have to be tied up if we leased it to some other government body? 435 MR. PEARCE: It is dependent on how long we have to raise money. If in fact we are required to secure funding for the full biennium, we would have to rent them out for two years. The longer that we are willing to rent, the more interested other governmental bodies are in renting. 454 REP. MANNIX: Have you looked to prison industries to raise some of the revenue to run the prisons?

TAPE 2, SIDE B

030 MR. PEARCE: Prison industries here, nor any place else, don't raise much money. Unfortunately, there is a misunderstanding of the ability for prison industries to raise money. We are currently operating a number of industries rather successfully, including - some public/private partnerships that are paying for themselves, but if we want to start a new industry we will need to use general funds, because we do not have the capital. We would also want to provide some salaries and wages to inmates so they would have some money when they left. Even if we did start a new industry, it would still not be making much money.

050 REP. MANNIX: There is still the consideration of morale and the training opportunities

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involved.

052 MR. PEARCE: Don't get me wrong, I want to expand prison industries, get more prisoners into more vocational training programs. The only problem we have is lack of startup capital.

061 CHAIR MILLER: Announces appointment of a new representative, Gail Shibley, appointed to fill District 12 vacated by Phil Keisling. Recess until 2:45 pm.

071 CHAIR MILLER: Reconvenes meeting at 2:45 pm.

080 BOB OLESON AND CARL MYERS, OREGON STATE BAR ASSOCIATION (OSB A): EXHIBIT B. -Presents testimony regarding OSB A's legislative requests. See Exhibit B.

120 MYERS: Briefly discusses what the Bar Association is and what their individual roles are.

175 REP. CLARK: With respect to lawyer advertizing does the bar plan on introducing any legislation restricting such advertizing?

180 MYERS: Not at this time.

183 CHAIR MILLER: Is there any reason for the repeal of the bulk sales act being introduced in the Senate rather than the house?

186 MR. OLESON: You would have to talk to the interim judiciary staff.

192 REP. EDMUNSON: What about the issue of doing away with the bar exam?

196 ALL MEMBERS: We should bring it up when the President of the Bar comes on January 24, 1991.

200 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION (ODAA) I am Marion County District Attorney. -ODAA would like to amend the evidence code to allow introduction of documents that have been transmitted by fax. -One controversial area with respect to search and seizure that has continued to grow in the last couple of years is the community caretaking function. It used to be the law that if a police officer is attempting to save someone's life, to find out if they are missing, or in need of some sort of assistance, that what ever is seen or takes place in the course of that conduct is admissible as evidence. The courts have now said that without some kind of specific legislative authority, that kind of search cannot be used for criminal prosecution. ODAA, therefore, would like to bring that issue before the legislature to

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debate whether legislative authority should be given for those kinds of searches. Other legislation which ODAA proposes includes: -Sentencing guidelines for felony cases: Right now no one is documenting Class A misdemeanor convictions and we would like to introduce legislation that would require courts to document, for sentencing purposes, all Class A misdemeanors. -Drug testing: We would like statutory authority to enable judges to force urine testing when the crime is not drug related. -Change in the law that would restrict access to information through department of motor vehicles concerning a persons' home address. -Requiring that a person, before they file for an office, specifically District Attorney, be qualified for that office. Recently there was a candidate for District attorney who was not qualified to be DA before the election. -Remove District Attorneys from civil commitment mental hearings. Due to budget cuts we would like to remove that responsibility unless a court specifically asks us to participate in a civil mental commitment hearing. -Minors in possession of alcohol: We think if you are between the ages of 18 and 21 you should lose your license if you are found to be in possession of alcohol. Right now if you are over 18 you may get a \$50 fine, but not lose your license. Also, if one is involved in furnishing alcohol to minors and the minors end up getting in an accident due to intoxication, the one furnishing the alcohol should lose their license. -Possession by consumption bill. -Granting authority in grand jury proceedings to allow helpers to assist mentally retarded witnesses. -Preventing expungment of juvenile sex offenses and persons crimes; allowing of the filing of affidavits to prejudice against referees in juvenile cases; granting the DA discretion in juvenile court decisions rather than giving such discretion to the juvenile department. -ODAA opposes misdemeanor guidelines.

386 REP. MASON: Do you have any feelings on the issue of scheme and network and where you want to go with that?

391 MR. PENN: I like both bills before the legislature this session, especially the draft of the bill that would identify heroin, cocaine, and methamphetamine as the primary drugs.

400 REP. PARKS: Do you have any proposal in bill form for limiting the discretion that DA staffs have in charging, as the Chief Justice mentioned?

415 MR. PENN: What you are talking about is limiting the charging decision like in a driving charge. Certainly, if the legislature would like to have those cases prosecuted as misdemeanors that is our recommendation.

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TAPE 3, SIDE A

012 REP. PARKS: How much does a defendant have to pay and how much is collected to pay for probation fees in Marion County?

028 MR. PENN: I cannot give you the figures since that is a court administrators' function, but I can tell you that it is low. There are gross dollar figures that are available.

030 REP. PARKS: In your court committed commitment proceedings do you provide an alternative for the representation of a mentally ill person if the DA is not to provide that?

031 MR. PENN: There is a court appointed lawyer available for the allegedly mentally ill person. The function of the DA is as a prosecutor.

044 JOHN POTTER, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION (OCDLA): EXHIBIT C.: I am the executive director of the Oregon Criminal Defense Lawyers Association which is a 650 member volunteer organization. Ross Shepard will be the lobbyist for the Association for this next session. -OCDLA plans to introduce legislation that: -Establishes more drug, alcohol treatment programs. Provides alternatives to incarceration. -OCDLA has been participating in a number of task force studies including: -The EMT group on prosecutorial charging practices. -The Spangenburg Task Force on corrections. -Interim Task Force efforts, the Criminal Justice Counsel. -OCDLA will fight to stand firm to prevent the erosion of civil liberties.

111 REP. MASON: Bill number 10 in your list provides for a property tax exemption for public defender offices. You may be interested in a bill coming up that would allow fulltime public defenders to buy into PERS. It would cost you about 16% of your salary.

127 LAWRENCE WOBROCK and CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION (OTLA): EXHIBIT D

210 REP. CLARK: (Referring to OTLA's proposed bill requiring District Attorneys to make information given to accused criminals available to crime victims) Are you working in conjunction with victims groups?

212 MR. WOBROCK: Yes.

215 MR. WOBROCK: (Discusses bill that would prohibit release of accident reports for commercial purposes, i.e. lawyer solicitation.) Reports that some attorneys read over accident reports and then contact, by mail, the victims to encourage a law suit. -Some lawyers, not members of OTLA, have even obtained access to the DMV computers. We _

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think that use of these reports for commercial purposes is an abuse of the system.

248 REP. EDMUNSON: I thought that was solicitation. 249 MR. WOBROCK: There are statutes that prohibit in-person solicitation, but because of the Saparo and Zagrunder case, the U.S. Supreme Court says that one-on-one mail solicitations are not prohibited and cannot be prohibited because of the First Amendment. There is a Florida Bar rule, adopted by the Florida Supreme Court, that tries to limit not only this method of solicitation, but also misleading television advertising. It will also eliminate nonlawyers and celebrities from advertising on behalf of lawyers, eliminating testimonials and claims such as, "My lawyer's the best." It also tries to control mail solicitations. This is something worth looking at.

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