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statements made during this session. Only text enclosed in quotation
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report a speaker's exact words. For complete contents of the
proceedings, please refer to the tapes.

HOUSE COMMITTEE ON LEGISLATIVE RULES AND REAPPORTIONMENT

SUBCOMMITTEE ON REAPPORTIONMENT

February 28, 1991 Room 350 8:15 a.m. Tape 12

MEMBERS PRESENT: Rep. Greg Walden, Chair Rep. Peter Courtney,
Vice-Chair Rep. Margaret Carter Rep. Bill Markham Rep. Tom Mason Rep.
Randy Miller

VISITING MEMBER: Rep. Ron Cease

MEMBERS EXCUSED: Rep. Ray Baum

STAFF PRESENT: Adrienne Sexton, Committee Administrator Carol
Wilder, Committee Assistant Kathleen Beaufait, Legislative Counsel

MEASURES CONSIDERED: Informational Meeting

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TAPE 12, SIDE A

009 CHAIR WALDEN calls the meeting to order at 8:20 a.m.

Calls members' attention to the recap of the testimony received at the
various field hearings conducted around the state.

025 KATHLEEN BEAUFIT, LEGISLATIVE COUNSEL: In establishing the
legislative record for reapportionment you are in many respects in no
different situation than you are in establishing the legislative record
for any other proposal. There is one thing to keep in mind and that is

every piece of legislation you have occasion to review you hope in your preparation you are making wise policy decisions; you are not absolutely guaranteed that you're going to have your result litigated. It is unwise to not make that consideration in light of reapportionment and in light of the ease with which the Oregon Constitution assures an aggrieved citizen the opportunity to test the plan.

In order to assist the court in making the decision supportive of the legislative plan, it would seem that it would be wise of you to build a very careful record showing how you reached your decisions; show what criteria you apply; and when you are offered testimony that suggests something quite different from that, you indicate or remind witnesses on those occasions that while you're willing and eager to hear suggestions from the citizenry you still are bound by certain rules that come from on high that will affect what you can or can't do. Your testimony received by the committee should not contradict what the committee is trying to do. The records should show reminders that we are bound by certain guidelines; i.e., our districts have to be contiguous, etc., so the records show how you build your assumptions. Your visits to other areas of the state to solicit citizen input on how situations should be handled in relation to rules that are imposed via the Voting Rights Act was a useful way of building a record. It will give you an opportunity, now that you've got the data, to look at what you want to do.

One of the standards that has been raised and one of the things that you're not supposed to do is to build a plan that has as its result the protection of incumbency. One ought to look very carefully that probably the best place to start is to look at where your present plan is in relation to population so that you have some idea whether the plan is perfect as it is.

077 CHAIR WALDEN: Did you mean where the current districts are as opposed to the current plan?

079 BEAUFIT: The current districts and what their populations are so that you have some idea what kind of building blocks you have in hand before you go on. You have to start somewhere. Covering the state with little sets of blocks without any rhyme or reason is certainly not a proposal that anyone would suggest to you nor is it particularly challengeable. You will probably be presented with maps of various kinds by witnesses and whether those maps are going to be something that you can fit into your proposals you will want to retain the proposed maps and keep the testimony. Keep the record clear that the statute has certain standards about compliance including equality, contiguity, etc., in proposing your plan, reviewing your record, and adding to that record. Keeping those criteria in mind should allow you to keep a good clean record that your proposal complies with the existing law and existing case law. We will try to keep you advised on the case law because it moves on us occasionally. It has moved between 1981 and 1991 in the direction of raising this question of so-called political gerrymandering. The rules are not exactly the same as they were in 1981, but you're still faced with the initial one and that is population equality. Since the House is starting with congressional districts, the congressional districts are held to a higher standard of population equality on the basis that they are larger districts and therefore have less reason to be able to use the geographic community of interest arguments departing from a high degree of equality. The other thing to remember in the congressional standard is one that is reviewed by a federal court as opposed to by the state court. At least that's our anticipation and that has been the general pattern in other states where

congressional districting has been challenged.

112 REP. CEASE: Do we have any sense at this point in terms of court cases or anything else of what those boundaries might be, what's acceptable, etc.? What do we use as a guideline?

118 BEAUFIT: The figures in the cases are something like .1 percent and the legislative one has been one that has rarely been held to anything that tight. It's a challenge to look at because the attitude is that one can accomplish the other goal, overcoming geographic barriers, retaining communities of interest. When you're dealing with 400,000 people rather than 45,000 people, you could be challenged at a lesser figure. The courts have thrown that little caveat in that we want population equality and if you could have achieved a better plan with greater equality that is going to be the test rather than the particular low deviation that you achieve with the current plan. So you're constantly faced with the thing that there's somebody out there drawing a different map that cut the corners a little bit differently and come out with a better figure. Trying to convince a court that you're justified in a slightly greater deviation because you didn't cut the corner quite the same is an impossible test. They're always holding you up to the perfect.

139 REP. COURTNEY: You mentioned the fact that we helped ourselves by having these public hearings outside of Salem in terms of establishing legislative record. We held them in Portland, on the coast, in Medford, and Madras. One of our members is from LaGrande. Would it be your advice that since that's eastern Oregon, which is a large part of Oregon but not as much population, that we also try to work out a hearing in eastern Oregon so that we have developed a true broad base of public hearing input for the record?

155 BEAUFIT: If you look at the mathematics of the problem, eastern Oregon is going to have to end up because of the simple population density being in the same district wherever you go. In the political sense (not partisan), the consultation of citizens about representation which is a pretty basic issue to those people may be a desirable thing to do.

162 REP. COURTNEY: Many people who live in the valley confuse central Oregon and eastern Oregon. There are major distinctions; they are not the same. I realize that during the week we couldn't go out and hold a hearing necessarily out there but maybe we should have.

170 CHAIR WALDEN: I might add that the hearings that we have held are five times the number out in the general public as were held in 1981 with that intent to try to get out to the best of our ability, recognizing member's individual schedules and many times their inability to attend the hearings we did hold. Additionally, I want to make a correction because of a newspaper article that ran indicating that somehow we had not notified the Confederated Tribes of Warm Springs. That article was factually in error and I pointed that out to its author. We did notify the Indian Services Commission, both in writing and Adrienne talked to the administrator in person. In turn, the commissioners who are members of that commission were notified and we did have a representative from the Confederated Tribes of Warm Springs to speak about their concerns relating to redistricting. Apparently, there was discussion between one of the congressional staff members and that reporter and they weren't quite in tune with the facts.

185 REP. COURTNEY: In no way was my inquiry of the witness intended to be a malicious statement or critical. I just found myself thinking about that and I thought maybe because we had Rep. Baum who is home most weekends, and I can well imagine if we held a hearing in LaGrande he might well be all alone.

205 BEAUFAIT: When you have occasion to read the court cases on reapportionment you will notice the emphasis on the record, I think we have to remember that in a good many states the committee records are basically unintelligible guides to the committee's accomplishments. In the state of Oregon, it has long been the practice that the committee records be quite specific, quite detailed, and contain a lot of information about what went into the policy and decisionmaking. I think that the usual practice in Oregon of maintaining records that indicate how decisions were made and who made them is important. In many states, they will not record the voting in committee. I was told by one figure from the southeast U.S. that if they recorded the committee votes, they'd never get any. When you see in these court cases criticism or concern about the records on which the reapportionment or redistricting was build you might keep that in mind. Generally, the committee records kept for committees in the state of Oregon are going to meet the test of building a background for why decisions were made.

217 REP. CEASE: In most cases it would be the common procedure that you start with your existing plan and try to figure out how you deal with that.

223 BEAUFAIT: It seems to me that would be a very reasonable way to begin. That doesn't mean that everybody who prepares maps is going to do it that way. One of the things you look at is how far off perfection we are right now.

230 CHAIR WALDEN: Reminds committee members of the second night of the Open House in the Redistricting offices tonight from 4:30 - 6:30, an open orientation both for members of this assembly as well as the general public and anyone else who has an interest. Asks members to take time to review Technical Support Access Memo that this committee adopted as an amendment to its rules which talks about accessing the technical staff and the various information. That handout is also available to members of the general public. We have set aside time on a regular basis at the terminals five hours on Fridays total for members of the general public. Specifically, there is time set aside for members of the congressional delegation and for the leadership of the House and Senate as well as members of this committee. Now that the data are available and the mapmakers are making maps, copies of our individual districts and maps will be distributed to members at the end of the day Monday. As we go about our work we should anticipate a public hearing on initial plans by March 12. This is a target date. We had originally discussed having our work hopefully to a point where we could go into work session toward the middle to the end of March and have a bill for the congressional districts by the 1st of April.

260 REP. COURTNEY: The March 12th date is congressional districts, not our districts or the state Senate districts?

262 CHAIR WALDEN: No, that's being done on the Senate side.

264 REP. CEASE: Where is the plan coming from?

265 CHAIR WALDEN: That is up to this subcommittee to begin work on a

document. I assume individual members of the committee will have some ideas they would like to pursue which they are more than welcome to do so. We would bring those plans to a public hearing process on March 12.

271 REP. CEASE: So would you actually expect at the time we have a public hearing there will be several proposals before us?

273 CHAIR WALDEN: I would anticipate both from the general public or perhaps from the members of the congressional delegation themselves or their representatives or through members of this assembly. There would be proposals as well from members of this committee and the general public.

277 REP. COURTNEY: March 12 is on a Tuesday. Would the hearing be morning or evening?

279 CHAIR WALDEN: In the morning. The subcommittee will meet generally in the mornings at 8:15. The full committee has to meet after 5:00.

282 REP. COURTNEY: So we're going to try to have something on paper?

283 CHAIR WALDEN: That we then can take a look at and discuss in subcommittee. I set it out there as a target date so that we aren't doing it in August.

287 REP. COURTNEY: The Speaker has told Greg and I that he would like the congressional part of this done by the end of March, so it's cranking-it-up time.

292 CHAIR WALDEN: That was a discussion that also occurred with the leadership of the Senate at one point early on.

294 REP. COURTNEY: Did we anticipate these numbers coming in at the time they did when that discussion took place?

296 CHAIR WALDEN: We actually anticipated them coming in later.

298 REP. COURTNEY: It would be somewhat realistic about when we can really have it done.

299 CHAIR WALDEN: I think you may find with the new computer technology that it's not the task that it was in earlier years. If not, we will allow more time.

The meeting was adjourned at 8:40 a.m.

Submitted by: Reviewed by:

Carol Wilder Adrienne Sexton Assistant Administrator