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.

Measures Heard SB 455 (WRK) SB 376 (PUB) SB 380 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

February 6, 1991Hearing Room C 1:15 p.m.Tapes 21 - 22

MEMBERS PRESENT:SEN. JOYCE COHEN, CHAIR SEN. JIM HILL, VICE CHAIR SEN. JIM BUNN SEN. JEANNETTE HAMBY SEN. BOB SHOEMAKER SEN. DICK SPRINGER

MEMBER EXCUSED: SEN. PETER BROCKMAN

STAFF PRESENT: BILL TAYLOR, COMMITTEE COUNSEL INGRID SWENSON, COMMITTEE COUNSEL MARK THORBURN, COMMITTEE ASSISTANT

WITNESSES: JUDGE DONALD ASHMANSKAS, WASHINGTON COUNTY CIRCUIT COURT JUDGE

WILLIAM LINDEN, STATE COURT ADMINISTRATOR

DAVID HEYNDERICKX, LEGISLATIVE COUNSEL'S OFFICE

CARL STECKER, OREGON DISTRICT ATTORNEYS ASSOCIATION

ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

PAUL SAUCY, FAMILY AND JUVENILE LAW SECTION, OREGON STATE BAR

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TAPE 21, SIDE A

005 CHAIR COHEN: Calls meeting to order at 1:15 pm.

SB 455

018 BILL TAYLOR, COMMITTEE COUNSEL: This is the reviser's bill relating to corrections of erroneous material in the Oregon Revised Statutes. (Exhibit A)

024 MOTION: Sen. Hill moved SB 45 to the floor with a "do pass" recommendation.

027 VOTE: Motion passed unanimously; Sen. Brockman excused.

BILL INTRODUCTIONS

031 TAYLOR: LC 1688 requires Supreme Court judges to be elected by the voters of each congressional district with remaining two judges elected at-large and two judges of the Court of Appeals to be elected by voters of each congressional district.

039 CHAIR COHEN: Calls for objections.

040 SEN. SPRINGER: Objects.

042 CHAIR COHEN: With Sen. Springer recorded as a "no" vote, bill will be introduced as a committee bill.

SB 380

050 INGRID SWENSON, COMMITTEE COUNSEL: Refers to proposed amendment (Exhibit B) prepared at Judge Ashmanskas's request. The amendments permit judges to appoint up to six alternate jurors in felony cases; it is currently limited to one or two. (Exhibit C). The amendments will also control the manner in which challenges to alternate jurors are exercised and would equalize the number of peremptory challenges for alternate jurors between the defense and prosecution.

063 JUDGE DONALD ASHMANSKAS, WASHINGTON COUNTY CIRCUIT COURT JUDGE: In favor of bill; the State Court Administrator also likes the bill and the amendment.

- The amendment increases the authorization for alternate jurors in circuit court criminal cases from two to six. It will be rarely used, but is necessary for long trials. Language regarding alternate jurors in death penalty cases (Exhibit D) has been deleted, but HB 239 3 deals with that specific issue that he favors. Language regarding replacement of regular jurors by alternate jurors after deliberations start in non-death penalty case needs more study. Asks for emergency clause.

102 CHAIR COHEN: Are the things that you want to study in the amendment or in things you've left behind?

106 ASHMANSKAS: Things left behind. I'll go to the Bar and try to generate some interest and research different approaches.

111 SEN. SPRINGER: Does the court have discretion in this area?

117 ASHMANSKAS: It's mixture of consultation with the attorneys, if case going to last a week or go over a weekend, and experience.

132 SEN. HILL: Would this allow you to replace a juror before the verdict?

135 ASHMANSKAS: Before the submission to the jury for deliberations; once deliberations begin, the alternate jurors will be excused.

142 SEN. HILL: Deliberation means deliberations by the jury?

143 ASHMANSKAS: Yes.

144 SEN. HILL: So someone can be replaced who hasn't heard anything about the case?

145 ASHMANSKAS: The alternate jurors are selected right at the beginning of the trial and hears all the evidence, attends every session, and looks at the exhibits. This bill would continue this practice.

152 SEN. HILL: Prior to this bill, would there have to be a stipulation between the parties?

155 ASHMANSKAS: No; it's always been up to the judge's discretion.

157 SEN. HILL: Then this is just a change in the numbers then.

158 ASHMANSKAS: Right; to conform to the civil side.

- Can have 12 jurors plus 6 alternates, or just one alternate, depending on what's appropriate.

- This is not a big money measure; if anything, it will save costs that would arise from mistrial resulting from not having enough alternate jurors.

165 SEN. HAMBY: Alternate jurors still going to be paid?

168 ASHMANSKAS: Yes.

- Rarely need alternate juror in district court; 99% of circuit court cases won't need them. Dollar amount is minimal as opposed to the savings in retrying cases.

183 SEN. HAMBY: Asks committee chair if this is time to amend bill to provide for emergency clause.

185 CHAIR COHEN: We'll schedule that another time for work session and deal with it then.

SB 376

197 SWENSON: Bill is comprehensive rewriting of statute (Exhibit E) regarding contempt. It's an effort to clarify the law, consolidate the rules with respect to sanctions, do away with distinctions in the current law that conflict with a recent Supreme Court case (Exhibit F), and simplify the procedure. Based in large part on a Wisconsin statute (Exhibit G).

212 CHAIR COHEN: Mentions that there were a number of hearings on a contempt bill last session and that a lot of people have been working on this during the interim.

223 WILLIAM LINDEN, STATE COURT ADMINISTRATOR: There were bills in 1987 and 1989 sessions that did not pass. Went back to rethink the situation. Consulted with a number of experts and interested parties; went through various drafts.

- Paraphrases written testimony. (Exhibit H).

279 DAVID HEYNDERICKX, LEGISLATIVE COUNSEL'S OFFICE: Bill based on two sources: the Wisconsin statute (Exhibit G) and Hicks v. Feiock case (Exhibit F).

- The Feiock case gives clear guidance to the states as to how to structure their contempt statutes to be compliance with the federal constitution.

- If you're going to be imposing punitive sanctions, then must give the accused the same rights and protections that you give a defendant in a criminal trial. The case did not enumerate what those rights are.

- Bill provides definitions of a punitive and remedial sanctions.

- Punitive sanctions are to punish a past contempt of court.

- Remedial sanction is to terminate a continuing contempt of court.

- Type of sanction to be imposed needs to be selected before the proceeding begins because the type of sanction you seek will determine the accused's rights and the applicable procedures to find them in contempt.

334 SEN. BUNN: Do you define two or three types of contempt? Is summary contempt a third type of contempt or a part of the others?

340 HEYNDERICKX: Summary imposition of contempt is dealt with Section 8 of the Act. It's not defined. There is a list of sanctions that can be imposed under a summary imposition procedure.

348 SEN. BUNN: But is summary imposition the imposition of one of the two defined types of contempt?

351 HEYNDERICKX: It's really in it's own world.

- Bill does not deal with the summary imposition of contempt. Under current statutes, we do have a provision that talks about "direct contempt." It is defined in almost the exact same way as Section 8 defines the situation when a court can summarily impose a sanction.

- Direct contempt must occur in the immediate presence of the judge. Also, the sanction may be imposed for the purpose of preserving order in the court or protecting the authority and dignity of the court. Views this as a limitation.

- This bill says that the procedures applicable to sanctions in other types of contempt don't apply to direct contempt. There is also a limitation on types of sanctions on those type of situations; $500 fine, 30 days in jail, probation, or community service.

404 SEN. BUNN: So line 18, number 3, is a complete list of options available to the court.

414 HEYNDERICKX: That's what the bill says, but there's caveat that the power to impose contempt is an inherent power of the court. Not sure how far that caveat will carry beyond what this bill does. Inherent power is difficult area to discuss; many court cases on how much inherent power a court has.

TAPE 22, SIDE A

007 SEN. BUNN: So we can make the statement that 30 days imprisonment is the maximum allowed penalty and the courts can still determine whether we have a valid ability to do that?

012 HEYNDERICKX: That's the case with all legislation.

013 SEN. BUNN: Wants clarification that we didn't leave a loophole, but that, as far as we are concerned, we've stated the maximum penalty.

017 CHAIR COHEN: Assume that if judge goes beyond that, then they'll have to justify it on their own inherent powers and then the case goes up to the appellate courts.

022 SEN. BUNN: So if we have the ability to set the maximum penalty for direct contempt, we've exercised it.

- As to summary imposition, earlier draft said no right to bail, no right to jury trial, etc. That language has been removed, but don't those conditions still exist?

032 HEYNDERICKX: That is the rule in the imposition of "direct contempt;" you do not have those rights in that situation.

- Paraphrases section-by-section description of first three sections of the bill contained in Exhibit H. Stresses that this analysis does not apply to direct contempt, but to actions occurring outside presence of the court or sanctions imposed other than for purpose of maintaining order in the court.

- Subsection 2 of section 2 states the rule with respect to utilizing contempt powers against corporations. Officers and directors of corporation can be held in contempt for acts of the corporation.

- Lot of bill in broad language; did not want to deal with every conceivable situation.

077 SEN. BUNN: Under remedial contempt, there's no right to counsel for first 30 days; does it exist if person to only 29 days under the criminal contempt?

087 HEYNDERICKX: Under punitive sanctions, the defendant is entitled to same right to court appointed counsel as you would in a criminal proceeding in which the fine or term of imprisonment imposed was the equivalent of the sanction sought in the punitive proceeding.

100 SEN. BUNN: So in punitive contempt, the person has all the rights of any other criminal defendant except the trial by jury?

101 HEYNDERICKX: That's correct.

- Paraphrases section 4 from section-by-section description of Exhibit H. Important to note that confinement can be either a remedial or punitive sanction; just because you're going to jail does not mean that you're going to get all the rights that are built in for punitive contempt. Remedial if confinement continues or accumulates until defendant complies with court order or judgment; it's punitive if sentence is definite.

139 SEN. BUNN: If we set an outer limit on remedial sanctions, would that make it punitive by the fact that there is a definite maximum?

143 HEYNDERICKX: You do not turn a remedial sanction into a punitive one by saying that the maximum sentence is a set amount of time.

147 SEN. BUNN: So as long as it's clear that, once the person complies, the sanction ends, it is remedial and the fact that we set a limit on how long the sanction is to continue would not cause a problem so far as changing what type of sanction it is.

151 HEYNDERICKX: That's correct.

- Remedial sanctions must be subject to termination by the person in jail by taking some act.

- Returns to paraphrasing of Exhibit H's description of section 4.

- Fines can be punitive or remedial as well.

- Subsection 5 of section 4 indicates that any sanction imposed for contempt is in addition to any civil remedy or criminal sanction that

may be available. May be double jeopardy issues here.

- Paraphrases Exhibit H's description of section 5 of bill. In addition:

- Changes procedure for remedial contempt in substantial ways.

- Can initiate by filing motion requesting order for defendant to appear and personal service of the motion on the defendant; no arrest warrant for remedial sanctions.

- Defendant only has those rights accorded to a defendant in a civil action.

- Have right to court appointed counsel only in event that the remedial sanction is going to be more than 30 days. If, after 30 days, still not complying with the court, will have to bring him back and appoint someone to represent him.

248 SEN. BUNN: So the proceedings will have taken place that determines the incarceration can take place without counsel and, once you've incarcerated for 30 days, then the defendant has a right to counsel, but not the right to revisit what brought about the incarceration.

255 HEYNDERICKX: That's correct.

259 SEN. BUNN: And under remedial, there's no limit on how long someone can be incarcerated?

261 HEYNDERICKX: There's some dispute about that.

266 SEN. BUNN: Is it possible to incarcerate a person for 29 days, and then bring them back every 29th day, can you send them back to jail?

272 HEYNDERICKX: No. Once you have spent 30 days in confinement, you have a right to appointed counsel. Don't think you can avoid appointing counsel after 30 days by saying it's a new contempt.

278 SEN. BUNN: How long can a remedial sanction go?

281 HEYNDERICKX: Section 9 of the bill indicates what be imposed; subsection 1, paragraph (b), indicates that it can be confinement for so long as the contempt continues or 6 months, whichever is shorter. Paragraph (f) contains additional category of sanctions that can be imposed if the court determines that the sanction would be an effective remedy for contempt. Thought that authorized additional period of confinement, but at the last meeting of the Joint Interim Committee on the Judiciary for the State Court Administrator, it was indicated that (f) was not intended to override the six month period.

310 SEN. BUNN: Then we'd simply need to state in paragraph (f) that these additional sanctions do not include additional incarceration. That takes care of concern about indefinite sentence.

- As to phrase "each separate contempt of court," if person commits contempt by refusing to do something and is incarcerated for 6 months, if there is not a new action on the part of the defendant, then there is not a separate contempt if the person still refuses to act?

331 HEYNDERICKX: That would be correct if the contempt was imposed for a specific act.

339 SEN. BUNN: Talking about situation where judge says you will sign a

statement saying that you will not violate my restraining order and the individual refuses to sign; after spending six months in jail, if individual still refuses to sign, can the judge impose another six months or must the individual create a violation of the restraining order and then the judge begin the process again saying that the individual is ordered to sign the statement.

365 HEYNDERICKX: Those are good questions; defers to William Linden.

375 LINDEN: The six months is the point in time where sanction of imprisonment for remedial contempt basically ends, but at the same time, everyone on the committee felt that we need (f) because there are situations where you run through the remedies for the contempt and still end up without an effective remedy. Putting the 6 months in is an attempt to put an outer limit of imprisonment for remedial contempt. IN situation that Sen. Bunn mentioned, you can have person released without signing the agreement, but at point of release, not sure you wouldn't have a continuing contempt, at which point the court could exercise discretion to determine an effective remedy for that continuing contempt.

405 SEN. BUNN: So on a continuing contempt, you've exhausted one portion on that case of contempt and you still have the other remedies available?

412 LINDEN: You can construe that example as a continuing contempt. Can't predict what the judge will decide is an effective remedy.

422 CHAIR COHEN: Then saying that, after serving six months, you're now going to start paying as a part of (f)?

431 SEN. BUNN: Don't think (f) was saying that, once you serve your six months, you're free from any responsibility..

TAPE 21, SIDE B

006 LINDEN: At the end of the six months, the judge could decide that that was not an effective remedy, so now I'm going to fine you a certain amount per day. None of the section 9 remedies are exclusive.

011 CHAIR COHEN: It could be a continuing contempt to try to get the person . . .

013 LINDEN: To do what the court ordered.

014 CHAIR COHEN: I think we're clarified as to where we are now.

015 SEN. BUNN: Understands the intent of the bill; once the six months is up, the defendant will not be incarcerated again for that contempt, although they have to pay a lot of penalties.

018 LINDEN: Does not want to suggest that the six months is an absolute limit; don't know if every judge will interpret it that way. And the inherent of the judiciary, not sure we ought to assume . . . .

022 SEN. BUNN: But that is the limit that we have stated and whether or not the courts will recognize that is like anything else that we pass.

024 LINDEN: That's correct. Could get situation where the judge gets down to (f) and can't think of any effective remedy.

028 CHAIR COHEN: And then they'd go back to their inherent powers and say we're going to do this anyway.

029 LINDEN: By passing legislation with the six month language, you've clearly stated what the legislature thinks the outside marker.

034 HEYNDERICKX: Subsection 11 of section 5 says that inability to comply with the court's order is an affirmative defense. It's the defendant's duty to come forward with at least a prima facie case.

- Line 16 on page 3 indicates that the proof of contempt shall be by clear and convincing evidence. Unclear at this point what level of proof you have to establish to have contempt.

- Subsection 13 indicates that the court will adopt rules to govern the imposition of remedial sanctions and ORCP, except for the rule on service, does not apply.

- Section 6 is the punitive sanction provision. Hicks v. Feiock indicates that if its a punitive sanction, then you'd better treat it like a crime. Question was whether you establish any other procedure when there was already a criminal procedure in place. Decision was that, in imposing punitive sanctions, you go directly through criminal justice procedure.

102 SEN. BUNN: Is the proof "beyond a reasonable doubt" or "clear and convincing?"

105 HEYNDERICKX: Beyond a reasonable doubt.

106 SEN. BUNN: So they have all the criminal protections except trial by jury?

107 HEYNDERICKX: That is correct.

- Not clear in this state when one is entitled to a jury trial. Cites Brown v. Multnomah County. There's a list of about five things you have to look at to determine if one is entitled to a jury trial. Bill only says that to the extent you are entitled to a jury trial, you are going to get a jury trial, but it does not say that you are going to have a jury trial for the same extent that you have under the criminal code. The bill does allow for the possibility that you may not get a jury trial if the court feels that the sentence imposed is less than that which arises to the level that gives you that constitutional right.

- The bill does say, except for the right to a jury trial, you're entitled to the statutory protections. Hopefully, sanctions in section 9 are not punitive enough to get you a jury trial.

157 LINDEN: It was decided that we did not need to extend the right to a jury trial to these proceedings. That is an issue that could be challenged.

168 CHAIR COHEN: You're going to go back and argue it on the basis of the federal standards?

170 LINDEN: That's correct. As far as we know, the issue of jury trial has never come up at trial or on appeal.

175 SWENSON: There is the 1985 case of State ex rel Dwyer v. Dwyer where the court held that a contempt proceeding is not a criminal prosecution for purposes of the jury trial provision of the Oregon constitution and therefore exempt from the jury trial requirement.

186 HEYNDERICKX: Bill does include right to court appointed counsel for punitive sanctions. Current statute requires court appointed counsel in any case where incarceration may result. This bill is substantial

change; currently, if you are put in jail under what, under this bill, is considered a remedial sanction, then you are entitled to an appointed counsel.

- Under the bill, if it is a remedial sanction, then you have no right to an appointed counsel unless you are in jail for more than 30 days. Under the punitive provision, you will have the same right to court appointed counsel that you would be entitled to under a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding.

211 CHAIR COHEN: Reminds the committee that we're talking about contempt and not changing the basic criminal statute.

215 HEYNDERICKX: Section 7 just paraphrases rules with respect to arrest and compelling attendance; entitled to security release if arrested for contempt for punitive sanctions or if you disregarded a motion to show up.

- Section 11 clarifies some issues about when you can appeal a contempt judgment.

- Section 12 codifies the recent appellate court case of OSB v. Wright which indicated that the statute of limitations in a punitive sanction case is generally two years.

251 LINDEN: Section 10 has a reference to a judge excusing himself in a contempt proceeding. Was suggested that a judge must excuse himself; we don't agree. Judges have always exercised discretion in this area; can create problem in the one and two judge counties.

- Section 16 allows the court to appoint a special prosecutor in a punitive contempt if the DA, for whatever reason, declines to prosecute; this only extends current authority to contempt actions. Expects rare use; it's the county's financial responsibility.

301 SEN. HILL: On section 6, why is it, unlike a remedial contempt, that a party aggrieved by a contempt of court cannot initiate a punitive contempt proceeding?

320 HEYNDERICKX: The prosecutor can initiate a contempt proceeding on his own initiative, on the request of a party to an action or a proceeding, or on the request of the court. Following the criminal law analogy, to bring a criminal type proceeding, you have to go through the District Attorney.

331 SEN. HILL: So the person who is a victim is out of the process when it's punitive?

335 HEYNDERICKX: If you've been hurt by this action, you can always bring an action for remedial sanctions.

344 CARL STECKER, OREGON DISTRICT ATTORNEYS ASSOCIATION: ODAA has few reservations about the bill. District Attorneys primarily prosecute contempts in two arenas: nonpayment of child support and violations of restraining orders. 8000 contempts filed annually by District Attorneys; don't know how many initiated by the private Bar or how many contempts the courts might initiate sua sponte.

- Paraphrases Dale Penn's written testimony (Exhibit I).

- The failure to comply warrant that is currently used does not require

any advance showing that you've attempted to issue a show cause. That might be appropriate for the first attempt to serve someone, but in the event that you're unable to gain service, want ability to secure a warrant of arrest.

- Believes the court's authority to appoint special prosecutors is an unfunded mandate. Double jeopardy issues might also be involved. Interferes with prosecutorial discretion. Needs to be articulated standards by which it is appropriate to appoint counsel in lieu of the District Attorney.

TAPE 22, SIDE B

029 - Have proposed amendments contained in Exhibit I.

- Wants prior notice to DA if court wants to appoint special prosecutor.

- Due to Measure 5, DA's will not be able to do additional work on nonsupporting contempts. Under section 16, compensation to be paid by the county except when the person so appointed performs the District Attorney's responsibility under ORS 25.080 (child support enforcement) in which case the executive department pays.

- "There seems to be enough inherent flexibility in the statute as drawn, or the proposed bill as drawn, to enable the court to fashion equitable relief that's going to fit the circumstance. As an example, I would note that courts routinely, at least some judges in our county, routinely, in the event there's a showing that the person in contempt, they routinely order the obligor who is unemployed to go out and seek work, to submit a list to our office of the contacts they've made in an effort to obviously get this person employed and get him paying his obligation and I don't anything in the bill that would necessarily prohibit that practice; I just like to put on the record that we would think that it's broad enough to include those type of traditional, equitable power over the person kinds of remedies."

- Discusses "and served" language as to when a remedial contempt is deemed commenced.

101 CHAIR COHEN: You want to add "serve" there?

102 STECKER: No; we want it deleted. An evasive defendant can defeat action by hiding out.

- There are several provisions in ORCP that do already apply to contempt actions; want procedural rules in the bill that will replace the ORCP provisions that will no longer apply.

- Discusses another proposed amendment to the bill concerning section 5 of bill (Exhibit I).

- Opposes bill's suggested deletion of last sentence of ORS 25.020(3) and wants amendment to line 8, page 9 of bill contained in Exhibit I.

- Wants to get attorneys fees in prosecution of contempt in support enforcement cases.

171 CHAIR COHEN: Will that come out before or after the payment?

172 STECKER: It will be up to the discretion of the judge. It would depend on the assets of the individual and whether they have enough to pay both.

174 CHAIR COHEN: If we're going to do that, I'm going to want a real

priority listed specifically.

175 STECKER: That's fine. So are not to prejudice the payment of support or something like that would be fine.

177 CHAIR COHEN: We'll look at that; keep in touch.

183 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: OCDLA generally likes the bill. Primary concern is the lack of attorneys for remedial contempts if the sentence is less than 30 days.

- Question it's constitutionality.

- Another problem is not being able to revisit why the contempt was originally imposed. - Appointing an attorney at the offset will not increase the cost of indigent defense work.

238 CHAIR COHEN: How would that affect any child support cases?

240 SHEPARD: Generally not something the OCDLA deals with.

247 CHAIR COHEN: Don't want to get ourselves into position of providing court appointed attorneys for all the 8000 cases that might be subject to the 30 days. Or is it just after you put them in jail that you have to have a lawyer?

256 SHEPARD: Doesn't know.

258 SEN. SHOEMAKER: You're talking about the right to counsel in remedial sanctions?

261 SHEPARD: Right.

262 SEN. SHOEMAKER: Line 6 of page 3 talks about affording the defendant the same right to court appointed counsel required in proceedings for the equivalent of punitive sanction. It looks like you have the same right to court appointed counsel as in a punitive proceeding.

275 SHEPARD: Need to go to initial paragraph on line 2 of page 3. The courts cannot impose a remedial sanction of more than 30 days without affording them the right to court appointed counsel.

279 SEN. SHOEMAKER: O.K.

283 SEN. BUNN: Thought that, under status quo, that all of these cases had a right to counsel and that bill limits the right to counsel. We're not expanding whose entitled to indigent defense.

290 SHEPARD: That's a correct statement.

- As to section 10, ask that you mandate that a judge be removed from a case where it is apparent that there is bias or an appearance of bias or circumstances where the judge's activity can be questioned.

307 SEN. BUNN: What is the status quo now?

311 SHEPARD: It's unclear.

314 SWENSON: The committee may wish to look at the Wisconsin statute (Exhibit G) on that particular question.

321 SEN. HILL: How long has the Wisconsin statute been in effect?

322 SWENSON: Nine years.

324 CHAIR COHEN: We also need to reflect on the fact that we don't have Brown v. Multnomah County in Wisconsin either.

- Tells Shepard to work with Ingrid Swenson on the technical side of things.

- Concerned with how we deal with child support cases.

359 PAUL SAUCY, FAMILY AND JUVENILE LAW SECTION, OREGON STATE BAR: We like the bill and the ODAA's suggested changes except the one about the appointment of special prosecutors; prefer the bill's proposal regarding special prosecutors.

385 CHAIR COHEN: Want you to comment in the ensuing days about the whole right of counsel questions as it relates to your business and practice.

398 SAUCY: Now, when we file a private contempt and the obligor comes without an attorney, the judge says that you're entitled to one; usually, my clients waive the right to put the person in jail so there is no right to counsel.

408 CHAIR COHEN: So you have a forced waiver of the right to put the obligor in jail.

411 SAUCY: Most mothers don't want to be know as the person who put daddy in jail.

- We agree with making the inability to comply with the court order an affirmative defense. That means that the person who is the defendant is required to notify the moving party, in advance, that he's going to use that as a defense. Gives the moving party to opportunity to gather evidence to prove that that is not the case. Also, if they don't put out the defense, then you know that they probably don't have one and will admit fault.

431 CHAIR COHEN: Adjourns meeting at 3:02 pm.

Submitted by: Reviewed by:

Mark Thorburn Committee Counsel

Ingrid Swenson Committee Assistant

EXHIBIT LOG:

A - 1/16/91 Letter from Chris Warner to Bill Taylor - On SB 455 - 2 pages B - Amendments to SB 380 - Ingrid Swenson - 2 pages C - Copy of ORS 136.210 et. seq. - On SB 380 - Ingrid Swenson - 1 page D - Copy of ORS 163.150 - On SB 380 - Ingrid Swenson - 1 page E - Copy of ORS 1.240 et. seq. - On SB 376 - Ingrid Swenson - 1 page F - Copy of Hicks v. Feiock, 108 S.Ct. 1423 - On SB 376 - Ingrid Swenson - 16 pages G - Copy of Wisconsin Statute Chapter 785 - On SB 376 - Ingrid Swenson - 17 pages H - Testimony on SB 376 - William Linden - 9 pages I - Testimony on SB 376 - Carl Stecker - 5 pages