

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 394 (WRK) SB 429 (WRK) SB 391 (WRK) SB 392 (WRK) SB 422 (PUB) SB 424 (PUB) SB 103 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

February 15, 1991 Hearing Room C 1:10 p.m. Tapes 29 - 31

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

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

WITNESSES: WILLIAM LINDEN, STATE COURT ADMINISTRATOR
ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION FRED AVERA,
OREGON DISTRICT ATTORNEYS ASSOCIATION JOHN HENRY HINGSON III, OREGON
CRIMINAL DEFENSE LAWYERS ASSOCIATION RANDY AMUNDSON, MULTNOMAH COUNTY
AND OREGON STATE SHERIFF'S ASSOCIATION JEROME LA BARRE, ATTORNEY AT LAW
JERRY JUSTICE, ASSOCIATION OF OREGON CITIES ROY TUCKER, PARTNER IN
PERKINS COIE LAW FIRM PAUL DONHEFFNER, STATE MARINE BOARD STEVE BENNETT,
EXECUTIVE DIRECTOR, BOARD OF POLICE STANDARDS AND TRAINING VALERIE
SALISBURY, LEAGUE OF OREGON CITIES ALICE PHALAN, EXECUTIVE DIRECTOR,
DISPUTE RESOLUTION COMMISSION ROSS RUNKEL, MEMBER, DISPUTE RESOLUTION
COMMISSION FRED VAN NATTA, MULTI-FAMILY HOUSING COUNCIL BERNARD RYAN,
PARTNER IN LAW FIRM OF SCHWABE, WILLIAMSON AND WYATT ROGER MARTIN,
SECURITIES INDUSTRY ASSOCIATION PAUL SNIDER, ASSOCIATION OF OREGON
COUNTIES

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TAPE 29, SIDE A

004 CHAIR COHEN: Calls meeting to order at 1:10 p.m.

- Bill introductions: LC 1516 relating to certain general contracts and
LC 1519 relating to workers compensation, both at the request of the
Associated General Contractors. Asks for objections to introductions of

the bills; hearing none, so ordered.

SB 392

030 BILL TAYLOR, COMMITTEE COUNSEL: The bill establishes minimum standards for handling prisoners, including two-way television, establishes procedures for disposal of hazardous substances and contraband, requires an emergency duress alarm system to be available to all court employees, requires an emergency evacuation plan for courthouses, establishes physical security for judges and their staff, appoints a security officer for each courthouse, and requires the court administrator to enact administrative rules detailing minimum security standards.

045 WILLIAM LINDEN, STATE COURT ADMINISTRATOR: The big issue is the potential cost to the counties in implementing the bill.

- The bill contains language stating that the unavailability of funds is a sufficient reason for the counties not pressing ahead with some of the security issues.

- Want to get courts and counties to start planning what their security needs are; need this legislation to prod this along.

- Will have an Association of Oregon Counties - Judicial Department task force next interim working on facility issues and how to fund solutions; we agree with the AOC that the task force should also look at security issues that will be identified as the counties, etc., work on their own security plan.

- No objection to the AOC's amendments. (Exhibit A) They require the Chief Justice to develop minimum standards for court security in such a way as to minimize the potential cost. Also, each county's presiding judge is to coordinate, rather than direct, implementation of security plan.

- Bill will be the first step towards establishing security needs; task force will work on how we'll finance them next biennium.

086 PAUL SNIDER, ASSOCIATION OF OREGON COUNTIES: AOC opposes the bill. Concerned about who's going to pick up the tap for court security. Afraid that plans will be developed which judges expect to be implemented but the counties do not have the resources for. Need the task force; many large and growing problems between the judicial department and the counties involving facilities, court security, etc.

- First recommendation is to direct the task force to work on these problems and not pass SB 392.

- If SB 392 adopted, want the amendments approved. (Exhibit A)

112 CHAIR COHEN: Notes that the bill does have subsequent referral to the Ways and Means Committee. Asks whether there should be discussion there about the opportunity for funding.

123 SNIDER: Wants Ways and Means to consider fiscal implications. Understands from William Linden that the intent of the bill is not to increase the cost to counties of facility security.

133 SEN. SHOEMAKER: What would the task force do and how is it different from what the bill calls upon the Chief Justice?

137 SNIDER: The task force would cover a number of issues. Cites several examples.

165 SEN. SHOEMAKER: So the task force would look at a whole broad range of issues?

166 SNIDER: Yes.

167 SEN. SHOEMAKER: And the security issues would just a part of their assignment?

168 SNIDER: Yes.

171 LINDEN: Wants bill approved. The task force has very broad and controversial issues before it; better not to let the security planning be swallowed up. With mandate, courts and counties can develop security plans. If the financing of court security has to be before the task force, would prefer the planning to be separated out.

- Don't need general fund money now, prefer bill goes to Ways and Means; will need the money some day.

188 SEN. BROCKMAN: Is there a fiscal impact?

190 LINDEN: There is no cost unless the counties decide to voluntarily incur a cost.

204 MOTION: Sen. Hamby moves adoption of the amendments.

206 CHAIR COHEN: Calls for objections; hearing none, so ordered.

209 MOTION: Sen. Hamby moves SB 392 to Ways and Means with a "do pass" recommendation.

213 VOTE: Motion passes unanimously; Sen. Springer excused.

SB 391

224 TAYLOR: The bill requires all courts in Oregon to provide disabled witnesses and parties in a court proceeding with an interpreter whenever it is necessary to interpret the proceedings; federal law requires that this be done. Provides further explanation of who would pay for the interpreters, etc.

244 CHAIR COHEN: There were people from the Disabilities Commission who've testified on this; any further comments from them regarding technical recommendations.

249 TAYLOR: Discussed with them legal questions regarding the scope of the bill.

255 CHAIR COHEN: Do they have anything more to offer?

257 TAYLOR: No.

258 LINDEN: I have two amendments:

- To delete funding clause found in section 6 of the bill; the funds to implement the bill are in the Governor's budget. Does not believe the bill needs to go to Ways and Means.

- Add to section 1 a provision allowing us to contract for interpreter services.

267 CHAIR COHEN: But it does have a subsequent . . .

268 LINDEN: And I request that it be removed.

- The funding for the bill as originally filed is in the Governor's budget.

- The Disabilities Commission raised some issues that would have funding implications; there is bill in House addressing the same issue; prefer that we try not to address it in this one as well because that would require a Ways and Means referral.

275 CHAIR COHEN: This bill does have a Ways and Means referral which this committee does not have the power to rescind.

295 LINDEN: Would like from committee a recommendation that the subsequent referral be taken off.

- No objection to amendments from the League of Cities (Exhibits B and C).

298 CHAIR COHEN: Do you have Legislative Counsel's amendments?

300 TAYLOR: No.

305 CHAIR COHEN: We ought to have the amendments from sponsors put through the Legislative Counsel's office.

- On page 3 of the your testimony . . . (Exhibit D).

311 LINDEN: Those are the amendments.

312 CHAIR COHEN: "For the record, you are offering the amendments on page 3 of testimony presented by the Court Administrator dated February 1, 1991. They delete section 6, the funding clause of the bill, and add to section 1 of the bill a provision that allows the State Court Administrator to enter into service contracts, etc., and there is language here specifically involved on that page."

322 SEN. HAMBY: Is the emergency clause still in question?

324 CHAIR COHEN: The emergency is still in question. Asks William Linden to address that.

328 WILLIAM LINDEN: The federal mandate does not become effective until January, 1992, but there is a need to have these services available. We can fund it now.

345 SEN. SHOEMAKER: Understood from a previous hearing that there was a federal mandate requiring us to do this, but there's a February 7th letter in the file saying, if the courts at some future date become recipients of federal funds, then the federal mandate applies.

355 LINDEN: The federal funding issue mainly results from Title 5 of the 1973 Rehabilitation Act. Under the 1990 Act, it does not matter if you are a recipient of federal funding; it applies to all levels of government.

367 CHAIR COHEN: The amendments from the Disabilities Commission (Exhibit E) goes beyond what's in the Governor's budget?

373 LINDEN: Those amendments would add \$60,000 in expense that is not included in the Governor's budget.

381 CHAIR COHEN: Explains amendments proposed by the Disabilities Commission. If assistive communication devices will be necessary to meet with the "504" federal rules, then we'll have to do this to comply when the rules come into effect in 1992 anyway even if we did not include in the statute.

401 LINDEN: That's correct.

406 CHAIR COHEN: Reiterates effect of the emergency clause and the fact that, whether in statute or not, we'll have to provide assistive communication devices when the federal mandate becomes effective in January, 1992.

426 LINDEN: The House Judiciary Committee has adopted these amendments in a bill submitted by the Disabilities Commission.

433 CHAIR COHEN: By not adopting amendments, it doesn't necessarily mean that they won't go into effect at the appropriate time.

445 SEN. HAMBY: There is nothing in the bill that speaks to the quality or ability of the interpreter.

458 LINDEN: There is a definition of a qualified interpreter in the bill. It's the court's responsibility to make sure that the services received are from qualified individuals. The bill will help establish standards and increase quality.

478 MOTION: Sen. Hill moves the amendments offered by State Court Administrator as part of his testimony.

487 CHAIR COHEN: Calls for discussion.

493 SEN. HAMBY: There's no mention of the emergency clause in those amendments.

495 CHAIR COHEN: The emergency clause is in the bill.

- Calls for objections to amendments; hearing none, so ordered.

TAPE 30, SIDE A

038 MOTION: Sen. Hill moves the amendments offered by the League of Oregon Cities (Exhibits B and C). 040 CHAIR COHEN: Those of 2/15/91?

041 SEN. HILL: Yes.

043 VALERIE SALISBURY, LEAGUE OF OREGON CITIES: These amendments have not gone through Legislative Counsel.

049 SEN. BROCKMAN: If we adopt the Oregon Disability Commission amendments, don't they supersede the ones from the League of Oregon Cities?

056 CHAIR COHEN: Want to find out what is the intention of the League of Oregon Cities; don't believe their amendments go to the same extent and that they are somewhat different.

059 SALISBURY: Our amendments are designed to provide for maximum flexibility for a court to address individual problems as the technology becomes available.

068 CHAIR COHEN: Asks William Linden if adopting these amendments includes the \$60,000 cost and if these amendments say the same thing as

those from the Disability Commission.

074 LINDEN: These amendments don't say exactly the same thing. They're designed to give government more flexibility to comply with the 1990 Act's requirement for assistive communication devices.

090 CHAIR COHEN: We have motion to adopt League of Oregon Cities' amendments; calls for objections; hearing none, so ordered.

100 MOTION: Sen. Hill moves SB 391 as amended to the Ways and Means Committee with a "do pass" recommendation.

103 VOTE: Motion passes unanimously; Sen. Springer excused.

SB 394

110 TAYLOR: This is a housekeeping bill. William Linden has proposed amendments (Exhibit F). There were questions as to section 4 relating to the Dispute Resolution Commission's surcharge and there is another amendment to remove that surcharge (Exhibit G).

120 CHAIR COHEN: Instructs committee on where to locate these amendments.

130 TAYLOR: There's also a letter from Emily Cedarleaf (Exhibit H).

132 LINDEN: The amendments (Exhibit F) provide the language needed to set up the revolving fund to collect costs for providing forms.

- The other amendment deletes the section of the bill dealing with the Dispute Resolution Commission surcharge as it applies to FED/landlord-tenant actions. There are two bills in the House that deal with the question.

146 CHAIR COHEN: We need to deal with the bills before us and not wait for the other bills.

158 LINDEN: The second amendment does delete the section of the bill that clarifies that the Dispute Resolution surcharge is applied to landlord-tenant actions.

161 CHAIR COHEN: Where is that?

162 LINDEN: Attached to my letter of February 5th (Exhibit G).

165 CHAIR COHEN: SB 394-2?

166 LINDEN: That's the first amendment that I mentioned setting up the revolving fund.

167 MOTION: The Chair moves that the committee adopt the 394-2 Legislative Counsel amendment.

174 SEN. HILL: What is the difference from the 394-1 amendments (Exhibit I)?

176 LINDEN: The only difference is that we've changed the name of the revolving fund.

183 CHAIR COHEN: Does everyone have a copy of the second amendment?

186 SENS. HILL AND BROCKMAN: No.

188 CHAIR COHEN: Explain again what your intention is?

190 LINDEN: Thought we had very clear language from the 1989 legislature requiring the courts to assess the surcharge in landlord-tenant cases. 35 counties assess the fee in those cases; Multnomah County does not. At the February 1st hearing, there was testimony that the fee should not apply in landlord-tenant cases. The intent in offering the amendment is to take this issue out of the bill.

212 CHAIR COHEN: The Chair needs to close the motion to move the 394-2 amendments. Calls for objections; hearing none, so ordered.

- Let's go back to surcharge issue; where is that language in the bill?

223 TAYLOR: Identifies where to find surcharge language in the bill.

232 CHAIR COHEN: And what does all that say?

233 TAYLOR: That removes from this bill, but not from the law, the issue of the surcharge. William Linden's amendment would clarify the issue for Multnomah County.

236 LINDEN: That's correct.

237 TAYLOR: Reiterates that the amendment would remove the issue from the bill, but not from the law, so the current ambiguity should still exist.

240 CHAIR COHEN: I thought this bill was drafted to clarify the ambiguity.

242 TAYLOR: That's correct.

243 CHAIR COHEN: Wants to leave the bill the way it's been drafted and presented to us.

248 TAYLOR: That would be section 4 and the clarifying language at the top of page 3, subsection 2. Reads the clarifying language.

257 CHAIR COHEN: That is the language that clarifies that FED's are included?

258 LINDEN: That's correct.

259 CHAIR COHEN: I have a communication from Yamhill County (Exhibit J) in support of charging the surcharge in FED's; assume that would be in support of the original bill as it was drafted.

268 LINDEN: That's correct.

277 ALICE PHALAN, EXECUTIVE DIRECTOR, DISPUTE RESOLUTION COMMISSION: Had brought copies of letter from Yamhill County (Exhibit J). Defers to Ross Runkel.

306 ROSS RUNKEL, MEMBER, DISPUTE RESOLUTION COMMISSION: When the legislation was first enacted, we never thought that FED cases were excepted from the surcharge; Multnomah County does. SB 394 as originally introduced simply clarifies that FED's are included.

322 CHAIR COHEN: How much resources are you actually

323 RUNKEL: We have not surveyed every county; have surveyed five counties to see if their actually collecting the surcharge. To our knowledge, no other county is not collecting it.

328 PHALAN: Have made contact with Clackamas, Washington, Marion, and Lane counties; all collect the fee. Also, William Linden has assured us that only Multnomah County is not collecting the fee.

337 CHAIR COHEN: What portion of your income is affected if the fee were deleted from the collection process?

341 PHALAN: Projections are as much as \$100,000 less for the commission; estimates a drop in revenues from \$520,000 to \$400,000.

- 32.4% of all cases filed in district court are FED cases.

368 CHAIR COHEN: We have another bill before this committee that increases fees; need to look at what we're collecting now.

- How much does the mediation program in Multnomah County cost?

384 PHALAN: Don't know about the small claims programs that handles the voluntary FED cases.

391 RUNKEL: Are you interested in the program run by the Marion County Court system?

395 CHAIR COHEN: I'm interested in Multnomah County, specifically dealing with FED's.

401 RUNKEL: Don't know what that program costs; it's operated by the local court system and we have nothing to do with it.

- Fees assessed to the litigants as filing fees do not go directly back into the court system.

410 CHAIR COHEN: I understand that.

- If Multnomah County doing it on their own, then why do we need you?

416 RUNKEL: Our work has been directed towards community dispute resolution programs which is where the vast amount of monies are going.

- We are involved in setting the regulations for court conducted mediation programs, the qualifications of mediators and the procedures that are used.

- We do not conduct or finance the court programs.

428 PHALAN: We can tell you what it would cost to run a program in Marion or Yamhill County to handle FED cases. We're looking at \$40,000.

- Further, there is another community program in Portland who also handle landlord-tenant cases.

453 CHAIR COHEN: What has been your involvement with Yamhill County?

TAPE 29, SIDE B

016 PHALAN: Our involvement has consisted of assistance in setting up training program for their mediators, locating possible trainers, and discussions in how to raise additional funds.

- Have figures indicating that we'll have \$6700 to provide to Yamhill County over next two years.

- Statute requires that we provide technical assistance to these

counties. In several counties where they do not presently have programs, they'll need expertise which the commission has in setting up programs.

041 SEN. SHOEMAKER: Have we heard from the Multi-Family Housing Council?

043 CHAIR COHEN: Introduces Fred Van Natta.

046 FRED VAN NATTA, MULTI-FAMILY HOUSING COUNCIL: The fee is collected in 35 counties, but not in the one county, Multnomah County, that has a program. We hope that you will not include FED cases in the program when 35 counties are not benefiting from it.

063 CHAIR COHEN: Yamhill County is getting ready to start a mediation program and thinks the fee will help them. Probably none of the other cases benefit either; it was a way to fund the commission to get groups doing mediation into place.

073 VAN NATTA: We like the idea of dispute resolution, but FED cases tend to be less susceptible to mediation.

080 CHAIR COHEN: We did have some testimony from Emily Cedarleaf that it works in FED cases.

085 SEN. BUNN: Wants the bill left alone. If proponents want to change it, they should do it with a separate vehicle instead of attaching it here.

093 SEN. HAMBY: How does Multnomah County currently fund their program?

096 RUNKEL: Multnomah County has one employee as a case manager. She devotes part of her time to collect a large number of volunteer mediators and to secure free training. Have recently received \$60,000 grant to pay for training; otherwise, it's free.

108 SEN. HAMBY: Where did the \$60,000 grant come from?

109 RUNKEL: The State Justice Institute in Virginia.

112 SEN. HAMBY: In light of Measure 5, does not want to jeopardize Multnomah County's program in any way.

118 MOTION: Sen. Shoemaker moves SB 394 as amended to the floor with a "do pass" recommendation.

130 VOTE: Motion passes unanimously.

SB 429

136 TAYLOR: This bill deals with the securities area, churning, excessive trading, the liability of professionals, etc.

149 ROGER MARTIN, SECURITIES INDUSTRY ASSOCIATION: Have relatively small problems with the bill.

162 BERNARD RYAN, PARTNER IN LAW FIRM OF SCHWABE, WILLIAMSON AND WYATT: Wants to later submit supplemental written testimony.

- Likes the bill, but concerned about the area of churning - excessive trading.

- Since NeSB *it v. McNeil*, there has been concern that Oregon law does not take cognizance of churning, where it was previously presumed that it did. Section 429 now incorporates language dealing with the churning

- excessive trading problem.
- Excessive trading has two components:
 - The broker who overbears on the unsophisticated investor resulting in multiple trades and losses to the investor.
 - The investor who engages in trading and use the broker and will encourage successive trades in order to recover losses or in the hope that they'll continue to be successful. Losses result because of the directions

given by the investor to the broker and, afterwards, the investor brings a lawsuit that will claim that the broker excessively traded and is liable for the investor's losses.

- Want it clear in the bill that liability for churning by a broker or a salesman is as a result of conduct that resulted in excessive trading; the conduct is initiated by the broker and not just a matter of the investor losing money after a number of trades.

223 SEN. SHOEMAKER: Could you point us to the provision of the bill that you're focusing on?

226 CHAIR COHEN: We're dealing primarily with the Legislative Counsel amendments (Exhibit K).

227 RYAN: In the LC amendments, it's at the bottom of page 3 and the top of page 4. Reads the provision in the statute. The language they would propose on line 2, page 4, is "conduct which would result in"

- There would be need to be a parallel provision in ORS 59.127, found in page 8 of the bill.

256 CHAIR COHEN: You basically want to insert the element of conduct?

258 RYAN: Yes. Wants it understood that you don't have churning just because there's a loss and there have been a multiple number of trades in the account.

- The purpose of the bill was to parallel the federal law and to create liability for churning and to punish conduct, not just excessive or multiple trades.

278 CHAIR COHEN: Any other issues of concern to you?

279 RYAN: The only other issue is with respect to conduct over which the professional has no control; wants it to be clear that the burden of proof does not shift to him to demonstrate good faith, but that it is the plaintiff's obligation to plead and prove bad faith and lack of diligence. Referring to language in subpart "B" on page 3 and the parallel provision in page 7.

313 SEN. HILL: What specific language are you talking about?

317 RYAN: Reads paragraph beginning at line 6 on page 3.

324 CHAIR COHEN: But subparagraph B deals with persons other than those who have primary responsibility and who should have known. So burden of proof doesn't follow in that same way to everyone.

329 RYAN: I understand that.

330 CHAIR COHEN: Don't want the record to remain unclear; doesn't want

testimony to ignore that we have some other burdens of proof if you are a different type of actor with respect to the securities' preparation and sale.

345 RYAN: You're statement is consistent with my own position; there has been an appropriate burden shifting in the bill. Wants it made clear, in part B, that the burden is maintained by the plaintiff and that it is pled and proved as such in a legal proceeding.

356 SEN. SHOEMAKER: Not seeing where you say it doesn't accomplish that.

358 CHAIR COHEN: Thinks that he's not satisfied that people believe it, but that it does say that.

372 RYAN: As to the federal act, we've experienced shifting in the burden of proof. Just wants to make it clear that this act does exactly what it says.

402 ROY TUCKER, PARTNER IN THE PERKINS COIE LAW FIRM: Thinks Bernard Ryan's statement concerning churning is consistent with what the language as saying and with the federal case law. Presents written testimony. (Exhibit L)

419 JEROME LA BARRE, ATTORNEY AT LAW: The bill follows the federal cases construing federal rule 10(b)(5) on churning and unsuitability. Those cases require, in churning, the cases to be excessive, there be control exercised by the broker, and that there be an intent to defraud.

- The proposed amendment offered by Bernard Ryan may be redundant; would prefer other wording.

TAPE 30, SIDE B

023 CHAIR COHEN: We'll set this aside and let you talk with Legislative Counsel, Bernard Ryan, and Roy Tucker to see what words should be used.

040 SEN. HILL: The language came from federal statutes?

042 LA BARRE: Not the specific language, but the intent. The problem is that the NeSB it case said that Oregon law does not apply to these things; want to make it clear that it does.

044 CHAIR COHEN: We'll come back to this bill later.

SB 422

058 FRED AVERA, OREGON DISTRICT ATTORNEYS ASSOCIATION: We oppose the bill.

068 INGRID SWENSON, COMMITTEE COUNSEL: Gives the committee copies of the Uniform Jury Instructions that currently govern witness testimony. (Exhibit M).

073 JOHN HENRY HINGSON, III, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: This bill came about from the practice by the District Attorneys of using inmate informants. Cites examples.

- Was personally involved in such a case; State v. Lowry, 37 Or. App. 641 (1978) (Exhibit N). Discusses Lowry case.

- Oregon has a problem of inmates buying time with testimony.

- Solution is to view such testimony with mistrust.

- This is a low cost solution to the problem.
- Scales of justice at a criminal trial are tilted in favor of the prosecution; they can purchase testimony with time and money whereas the defense lawyer would be indicted for the same thing.
- Jury should be fully informed as to that type of testimony.

194 SEN. HILL: You're asking, in every instance, regardless of the inmate's background, for the prejudging of the witness. They may not be lying. If witness has the background you've described, it's the defense attorney's job to find this out.

222 HINGSON: Cites another example. Feels that the District Attorneys' actions constitute a felony. Saying these witnesses are not automatically lying, but are automatically distrusted and distrustful for the same reason that accomplice testimony should be viewed with caution and distrust.

248 SEN. HILL: As long as you can point this out to the jury, why do you need an automatic jury instruction?

262 HINGSON: In one of the examples cited, the state did not disclose to the defense that the witness had an outstanding warrant for murder. Also, the time spent in doing this research is great and most defense lawyers for indigents aren't paid enough to do that amount of work. You'll have innocent people convicted; cites another example. In weak cases, the District Attorneys need the testimony.

312 AVERA: ODAA opposes the bill; it doesn't make any sense and it's bad policy.

- Jury instructions are too long and anything that adds to the burden of jurors is inappropriate unless there is a need for it.
- Long been the policy of the courts that the courts should not comment on the evidence, but this bill would put the judge in the position of commenting on the character of a witness. The accomplice jury instruction is different.
- The bill irrationally puts all in-custody witnesses into the same category. Cites examples. Any of these inmates can hear an incriminating statement. Some come forward for a variety of motives, some selfish and others altruistic. Cites example.
- If you tailor a jury instruction to a flaw in the witness, there is no end to it. Cites examples.
- The bill is unnecessary; current instructions cover the area adequately. Submits and reads to committee copies of Uniform Jury Instructions 1004 and 1023. (Exhibit 0).
- Due process and the discovery statutes requires the state to turn over information of any deals or promises made. A jury instruction will not cure unethical conduct in a particular case.

470 CHAIR COHEN: The prosecutors should be turning that over to the defense lawyer.

471 AVERA: Absolutely. If the prosecutor fails to do that, he can be disciplined by the Oregon State Bar and can go to jail.

028 CHAIR COHEN: Asks Fred Avera to shorten up testimony.

034 AVERA: Summarizes testimony.

041 HINGSON: Submits Respondent's brief from State v. Lowry as an exhibit. (Exhibit N).

SB 424 (See Exhibits P, Q, and R)

044 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: The bill remedies the unequal application of Uniform Trial Court Rule 7.010. Explains function of the Uniform Trial Court Rules. UTCR 7.010 was subject to extensive analysis in 1989, but the revisions that resulted did not solve the problems. (Exhibit AC)

- The rule provides that, in criminal cases, if a plea bargain is to be struck, then it must be done 35 days after arraignment or 35 days before trial. The circuit courts are interpreting this in many ways; the most egregious is when a call is held 35 days after arraignment, the parties report the case is set for trial, and a trial date might not be set for another six months thereafter; many things can happen during that six months that can affect the case. The problem comes when the attorneys late approach the court saying that they want to plea bargain and the court says no because you've reported this for trial, resulting in an unnecessary trial and accompanying expense. The bill will remedy this.
- Met with Chief Justice Peterson and with Dale Penn this morning and there may be a solution less drastic than what this bill calls for. Discusses details of that proposal.

- The Chief Justice has problems with the legislature getting into the management of the court dockets.

- Asks for appearance before the committee two weeks hence to report progress.

091 CHAIR COHEN: That would be helpful; instructs Ross Shepard with the State Court Administrator, the Oregon District Attorneys Association, and the Chief Justice.

- Passes on calling the witnesses (William Linden and Fred Avera) who've signed up to testify in opposition to this bill and urges them to work with Ross Shepard.

SB 103

105 CHAIR COHEN: This is the Uniform Assessment Bill.

107 SWENSON: There was a Task Force on Criminal Fines and Assessments during the interim; Steve Meyer is on his way here to present their report (Exhibit S).

111 CHAIR COHEN: Let's just hear from our witnesses; we can bring Steve Meyer in at another time.

115 RANDY AMUNDSON, OREGON STATE SHERIFF'S ASSOCIATION: Reads Multnomah County Sheriff Robert Skipper's letter to the committee. (Exhibit T). Also has letter from Benton County Sheriff Dave Cook (Exhibit U).

157 JERRY JUSTICE, ASSOCIATION OF OREGON COUNTIES: In 1989 session, the concern was raised that the unitary assessment was a revenue neutral measure. Can no longer prove that it is revenue neutral. Asks that the committee include in the record that it is the intent of the committee that, should SB 103 pass, it be administered by the State Court

Administrator in a fashion that is revenue neutral.

179 CHAIR COHEN: That would include the breakout from the old SB 1065?

181 JUSTICE: Yes; separate and distinct from SB 1065.

185 PAUL DONHEFFNER, DIRECTOR, STATE MARINE BOARD: Want the bill to be revenue neutral. The percentages in the bill's section 2 would put his agency at a disadvantage relative to current revenues. Those percentages were developed in 1985-87 and our portion relative to the overall mix has changed somewhat. Paraphrases written testimony (Exhibit V).

211 LINDEN: Paraphrases written testimony (Exhibit W). In addition:

- Under the unitary assessment, you have to satisfy the obligations in the four categories listed in written testimony with a slight modification.

- Wants to get to a system of a single state assessment in criminal cases. Discusses benefits. Intent is to be revenue neutral although there is mechanism in legislation that provides a way of adjusting recipient amounts that the legislature can utilize if it thought it was necessary.

- Proposing effective date for the unitary assessment of July 1, 1992 to give cities and others time to implement the unitary assessment.

- Notes that section 2 of the bill adds a category for marijuana fines and fees.

- Have an emergency clause; without it, would not beat the current July 1, 1991 repeal date.

- If we find in first year that it's not revenue neutral, we'll be back in 1993 to correct the problem. Have reserve account in the system.

317 CHAIR COHEN: We'll have you back again when we get to the work session.

320 STEVE BENNETT, EXECUTIVE DIRECTOR, BOARD OF POLICE STANDARDS AND TRAINING: Our primary revenue source has been the special assessment on fines and bail forfeitures. Has written remarks (Exhibit X).

- Concerned about effects of Measure 5 and the recession.

345 CHAIR COHEN: How much of the forfeiture monies that go into law enforcement go into training and how much comes back to you? Wants Steve Bennett to think about that between now and the work session.

355 BENNETT: We are not, at present, receiving any forfeiture monies.

357 CHAIR COHEN: That's why I'm raising the question. Need to get before committee the law enforcement officers who are receiving the forfeiture monies but who complain that they do not have enough to train their police to talk about that.

372 BENNETT: Under the present scheme, we have an adequate amount for the training required by the state and provided by the state. The issue you might be addressing might be the local requirement for in-service that is not provided at the state level.

- One of the features of the unitary assessment as a revenue source is

the balance that it has promoted between the growth in the need and the amount of the revenue. There are a lot of local needs that are not, and we cannot, meet at the present time. Perhaps they're addressing that through the forfeiture issue.

392 CHAIR COHEN: No, they're not. They're complaining because they don't have enough money out there.

- You agree with the bill?

399 BENNETT: Yes. The assessment is a proven and effective method of addressing the revenue that we need at today's level.

412 CHAIR COHEN: As to the marijuana fines and fees, are they going back to treatment? Is there balance on the treatment side?

421 LINDEN: The marijuana fine and fee account is an account in the Department of Human Resources for use by alcohol and drug abuse programs and its funded by monies that come in from offenders. We estimate revenue of this current biennium to be \$50,000.

438 CHAIR COHEN: We'll send a note to everyone to review their testimony before we get to work session.

- Adjourns meeting at 3:30 p.m.

Submitted by:

Reviewed by:

Mark Thorburn
Committee Counsel

Bill Taylor Committee Assistant

Reviewed by:

Ingrid Swenson Committee Counsel

EXHIBIT LOG:

A - SB 392 w/ Proposed Hand-Engrossed Amendments - Paul Snider - 2
pages B - Proposed Amendments to SB 391 - Valerie SaliSB ury - 1
page C - SB 391 w/ Proposed Hand-Engrossed Amendments - Valerie
SaliSB ury - 5 pages D - Testimony on SB 391 - William Linden - 4
pages E - Proposed Amendments to SB 391 - Oregon Disabilities
Commission - 1 page F - Proposed Amendments to SB 394 (i.e., SB
394-2) - William Linden - 1 page G - Letter and Proposed
Amendments Re: SB 394 - William Linden - 2 pages H - Letter and
Proposed Amendments Re: SB 394 - Emily Cedarleaf - 2 pages
I - Proposed Amendments to SB 394 (i.e., SB 394-2) - William
Linden - 1 page J - Letter Re: SB 394 - Alice Phalan - 1 page
K - Proposed Amendments to SB 429 - Committee Staff - 10 pages
L - Testimony on SB 429 - Roy Tucker - 14 pages M - Uniform
Jury Instructions 1004 and 1016 - Committee Staff - 2 pages
N - Respondent' Appellate Brief in State v. Lowry, 37 Or. App. 641
(1978) - John Henry Hingson - 38 pages O- Uniform Jury
Instructions 1004 and 1023 - Fred Avera - 2 pages S - Report to

the Joint Interim Committee on Revenue and School Finance and the 66th Oregon Legislative Assembly from the Task Force on Criminal Fines and Assessments - Steve Meyer/Committee Staff - 21 pages
T - Letter from Sheriff Robert Skipper Re: SB 103 - Randy Amundson
- 1 page U - Letter from Sheriff Dave Cook Re: SB 103 - Randy Amundson - 2 pages V - Testimony on SB 103 - Paul Donheffner - 1 page W - Testimony on SB 103 - William Linden - 25 pages
X - Testimony on SB 103 - Steve Bennett - 2 pages AC
- Analysis and Evaluation of Trail Court Compliance with Uniform Trial Court Rule 7.010 Re: SB 424 - Ross Shepard - 186 pages

(Exhibits Submitted to Committee Prior to Meeting and Not Discussed During Hearing)

P - Testimony on SB 424 - William Linden - 4 pages
Q - Letter Re: SB 424 - William Gaylord - 1 page R - Letter and Attachments Re: SB 424 - Paul Connolly - 6 pages Y - Letter Re: SB 103 - Fred Pearce - 1 page Z - Copy of ORS 137.290 et. seq.
Re: SB 103 - Committee Staff - 3 pages AA - Copy of ORS 137.306 et. seq. Re: SB 103 - Committee Staff - 2 pages AB - Proposed Amendments to SB 103 - Committee Staff - 4 pages