

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 980 (WRK) SB 507 (WRK) SB 451 (WRK) SB 948 (WRK) SB 881 (PUB) SB 1187 (WRK) SB 930 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

April 12, 1991 Hearing Room C 1:10 p.m. Tapes 107 - 108

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

MEMBER EXCUSED: SEN. JIM HILL, VICE CHAIR SEN. BOB SHOEMAKER

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

WITNESSES: ELLIOT WEINER, OREGON PSYCHOLOGICAL ASSOCIATION CHUCK BENNETT, OREGON PSYCHOLOGICAL ASSOCIATION JUDY SNYDER, OREGON TRIAL LAWYERS ASSOCIATION CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION HENRY G. WHITE, CITIZEN SUSIE GERTTULA, CITIZEN KATHY M. WHITE, CITIZEN DAN BROSNAN, OREGON STATE POLICE ROD INGRAM, OREGON FISH AND WILDLIFE MARK COMSTOCK, OREGON STATE BAR DEBTOR-CREDITOR SECTION LARRY OGLESB Y, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION

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TAPE 107, SIDE A

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

SB 948

017 CHAIR COHEN: I hope you're not going to read the testimony.

018 MARK COMSTOCK, OREGON STATE BAR DEBTOR-CREDITOR SECTION: I'm not going to read the testimony (Exhibit A).

- The Debtor-Creditor Section opposes the bill. First, the bill would seek to make nonuniform the uniform provisions of the Uniform Commercial

Code. Second, the bill would affect a creditor who does not perfect a purchase money security interest within the ten day time period set in the U.S. Bankruptcy Code.

048 SEN. BUNN: Did you oppose the bill last session when we gave the right to farm implement dealers?

050 COMSTOCK: Yes. A copy of Craig Edwards' memorandum to the committee from last session is included in Exhibit A.

055 SEN. BUNN: Are you aware of any instances where the farm implement dealers have had the opportunity to use a line of credit that has caused a problem?

057 COMSTOCK: No.

058 CHAIR COHEN: Comments on whether the committee wants to vote on the bill.

065 MOTION: Sen. Bunn moves SB 948 to the floor with a "do pass" recommendation.

069 VOTE: Motion passes 4 to 1; Sens. Shoemaker and Hill excused and Chair Cohen voting no.

SB 1187

082 BILL TAYLOR, COMMITTEE COUNSEL: The bill creates a new uniform commercial code to regulate the transfers of funds where no paper documents are involved.

088 CHAIR COHEN: No amendments offered?

089 TAYLOR: No.

090 MOTION: Sen. Hamby moves SB 1187 to the floor with a "do pass" recommendation.

093 SEN. BUNN: Going to vote for it in committee, but wants to look at it a little more and might vote no when it before it gets to the floor.

096 VOTE: Motion passes unanimously, Sens. Shoemaker and Hill excused.

SB 507

102 CHAIR COHEN: Wants to go back and do a little more technical work on the dash five amendments (Exhibit B). Likes the dash two amendments (Exhibit C). Expresses concerns.

131 SEN. HAMBY: If you have concerns with dash five as to the confidentiality issue, then you wouldn't want to move those then.

134 CHAIR COHEN: Right.

- We ought to make sure that dash two gets on its way.

138 SEN. HAMBY: What's the bill in committee?

139 CHAIR COHEN: There's a house bill relating to child support. This bill relates to domestic relations. So both of those would fit under

here. Any other child support bills coming?

149 TAYLOR: Monday.

151 SEN. HAMBY: Let's hold it over and work on it.

156 CHAIR COHEN: We'll hold SB 507 for a couple of days.

SB 881

176 CHUCK BENNETT, OREGON PSYCHOLOGICAL ASSOCIATION: Supports the bill and the dash one amendment (Exhibit D).

184 ELLIOT WEINER, OREGON PSYCHOLOGICAL ASSOCIATION: Cites example of why the bill is needed.

- At present, there is no obligation to duty to protect and there is no standard. We can't tell consumers what we can do to protect them if someone identifies them as a potential victim. We also can't tell clients what we will do if they tell us that they are dangerous or how or when we will violate their privilege of confidentiality.

- Cites court cases and statutes in other states.

- No idea of the extent of the problem in Oregon, but do know that there's a potential threat.

- The bill is a statement of the therapist's obligation and a statement of when it is appropriate to violate confidentiality.

- Refers to materials in Exhibit E.

269 CHAIR COHEN: What do the dash one amendments (Exhibit D) do?

271 WEINER: They clear up some of the problems in the earlier bill.

283 CHAIR COHEN: You have to take reasonable precautions. How do you feel this deals with your confidentiality question?

290 WEINER: Page 2, section 3, paragraph 3 says that if you do violate confidentiality, then you will not be held liable for the violation.

- Paraphrases section 3, paragraph 2 of Exhibit D. The issue of professional standards always comes into play.

326 TAYLOR: As to line 15, if patient says they're going outside and shoot someone, is that a clearly identified victim?"

332 WEINER: If that is the only thing my client said, no. Would not take the threat likely. Would do an assessment of lethality. Cites examples of threats too ambiguous to act on.

365 TAYLOR: Is there a point between where you have a clearly identified victim and where you don't?

369 WEINER: You're talking about a continuum. I would have to try to move that person across the continuum as much as possible to help identify the victim. Cites example and disadvantage of violating confidentiality without clearly identifying the victim.

389 TAYLOR: Saying that you would not have to know the victim's name?  
Could be not just one person, but a specified group?

393 WEINER: If it were "one of my children," that's a specified group.  
Would not have to say which one of your children.

400 SEN. BROCKMAN: This looks familiar.

404 CHAIR COHEN: We passed it on the Senate floor with a minority  
report and . . .

406 SEN. BROCKMAN: This was the minority report?

407 CHAIR COHEN: I don't recall. The minority report failed. It went  
to the House and got into a conference committee and that's where it was  
on adjournment. That's why I'm interested in their revised dash one.

420 SEN. BROCKMAN: I remember it, but don't remember where I was on the  
bill.

423 CHAIR COHEN: Take your time.

424 WEINER: Thought it was unanimous, but that's just my recollection.

426 SEN. BROCKMAN: That's why there was a minority report.

427 WEINER: Maybe there was one vote against it.

428 CHAIR COHEN: Suggests the veracity of the witnesses have something  
to do with the bill.

434 WEINER: Well maybe there were a couple of votes.

435 SEN. HAMBY: Qualified mental health professionals include who else  
beyond psychologists?

439 TAYLOR: Lists the other mental health professionals.

443 BENNETT: Lists others.

447 WEINER: Lists more.

452 SEN. HAMBY: Why have you neglected schools, counties, etc., in  
section two?

460 WEINER: Your question again?

461 SEN. HAMBY: Why just speak to an employee of the state?

462 WEINER: We've been told that the state already has guidelines and  
liability issues for its employees which we cannot touch with this bill;  
it would be in conflict, so we have to exempt state employees.

469 SEN. HAMBY: We have the same guidelines for other state employees.

473 SEN. BROCKMAN: Is this based on the administrative rules or the  
statute that governs those state employees that are guided in the  
direction of reporting these individuals?

483 WEINER: Yes, in a general sense.

490 SEN. BROCKMAN: On which side of the line does it differ?

492 SEN HAMBY: Liability.

493 SEN. BROCKMAN: I know that.

496 WEINER: What we're referring to is the tort claims limit.

498 SEN. BROCKMAN: Right.

TAPE 108, SIDE A

039 BENNETT: What we're looking at there is limitations on awards and then, inside each of the agencies, they may have established an administrative rule or policy that instructs their employees how to respond. Don't think this bill was drafted with any of those rules in mind, but rather to deal with the peculiar problems faced by practitioners in private practice.

051 SEN. BROCKMAN: Not talking about limitations, but procedures.

052 CHAIR COHEN: I think the answer is that they don't know.

053 SEN. BROCKMAN: That's helpful.

054 WEINER: They don't delineate in statute state facilities or state employees; it comes down to an internal decision.

058 CHAIR COHEN: But their internal decision may or may not be the same that you have in your own private sector practice today.

059 WEINER: Right and it could vary from institution to institution.

062 CHAIR COHEN: So a psychiatrist working in a state hospital would not have the benefit of this statute.

073 JUDY SNYDER, OREGON TRIAL LAWYERS ASSOCIATION: Opposes the bill. Cites ethical principle adopted by the American Psychological Association found in Exhibit F.

- The issue is not confidentiality.

- There really hasn't been any litigation in Oregon that has raised the specter of concern about what the Oregon courts are going to do with these issues. Discusses Cain v. Rijken. Considering the various circumstances under which individuals could potentially be injured by dangerous patients, this is an area that becomes tough to legislate.

- The question of whether there is the ability to predict dangerousness is addressed elsewhere and is imposed on many of us. Cites examples.

173 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Describes the Washington case that Dr. Weiner referred to in his testimony.

- This is an area of the law that is still developing; no indication that the Oregon courts will do anything irrational or bad to psychotherapists.

- The bill is unclear as to what it is suppose to cover. Cites examples.

- There's no obligation under the bill that the psychotherapists act reasonably or rationally.

- Sees no great difference between identifiable and nonidentifiable person;

psychotherapists should be required to take whatever actions they can take.

263 ROSS SHEPARD, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: This bill causes considerable difficulties in the realm of criminal prosecutions. Gives example.

292 CHAIR COHEN: Didn't have testimony like that last session.

- Comments on agenda and witnesses for the rest of the day.

SB 930

330 HENRY WHITE, CITIZEN: Paraphrases Exhibit G.

383 CHAIR COHEN: Please leave copies of your written testimony.

406 SUSIE GERTTULA, CITIZEN: Refers to maps in Exhibit I. Discusses the elk herds in Svensen, Oregon. Describes other materials in Exhibit I. Same problem exists in Josephine County. Paraphrases Exhibit H.

TAPE 107, SIDE B

032 KATHY WHITE, CITIZEN: Paraphrases letter from Carol Newman (Exhibit J).

067 SEN. BROCKMAN: Very interested; good testimony.

072 CHAIR COHEN: Comments on witnesses and the bill.

088 DANIEL BROSNAN, OREGON STATE POLICE: Paraphrases Exhibit K.

110 CHAIR COHEN: You give it back to them, so you don't have any evidence anyway. Am concerned about what additional duty to maintain evidence there would be if now you proceed on whatever you proceed on.

118 BROSNAN: This bill would require us to seize the wildlife taken in conjunction with the violation.

119 CHAIR COHEN: Seize it.

120 BROSNAN: Seize it and take it from the person who killed it.

121 CHAIR COHEN: But you're standing right there.

122 BROSNAN: Once you seize it, you have to do something with it. Transportation, processing, and storage.

123 CHAIR COHEN: Ought to be able to think of some way to give it to Good Will or another way to deal with it.

125 BROSANAN: If you seize it as a result of a violation, then you would be required to maintain it until the case is adjudicated because it is evidence.

128 CHAIR COHEN: But giving it back to the person means you're giving the evidence away.

130 BROSANAN: Under the present law, we don't seize it; it's not evidence of a violation.

132 CHAIR COHEN: But can't we just say that you can leave it there and let it rot like a road kill and have you pick up as a road kill. We can fix it so you don't have to treat it as evidence. It seems so contrary to what we ought to be doing.

142 BROSANAN: We agree, but under this bill, we're required to seize it, take care of it, and dispose it. That would cost an additional 1500 man hours.

146 CHAIR COHEN: Help us to fix up this bill.

149 BROSANAN: Not sure there is another way to do it.

- Evidence that's seized needs to be treated in a certain manner.

152 CHAIR COHEN: Let's just say that its not evidence, but that its not the property of the violator.

162 BROSANAN: Under the present theory, wildlife belongs to the state and once taken and reduced to their position, it is the hunters and they may dispose of it legally. Once a tag is applied, it is theirs, whether they're in violation of the trespass laws or not. Need mechanism to take that property away from them.

172 CHAIR COHEN: You said this mechanism isn't satisfactory; what mechanism is?

173 BROSANAN: Did not say that it is not satisfactory; am saying that it will cost us additional man hours to do it.

- Spending 1500 hours now on trespass complaints statewide. This bill will cost us a like amount.

181 CHAIR COHEN: Can we help you by figuring out some other creative way that doesn't demand that you keep the animal.

184 BROSANAN: Willing to consider any possibility.

185 CHAIR COHEN: Would be useful to see if we can figure out this whole business of not having it go to the violator and having the property disposed of and not deemed evidence.

191 BROSANAN: We're willing to do anything we can.

- We're dealing with an extremely perishable item.

198 CHAIR COHEN: How do you deal with fish that are taken illegally?

199 BROSANAN: In a lot of instances, our people pack little coolers that

they put them in to preserve them as evidence.

- An elk is a very large animal; may have to drive up to 200 miles to find a cooler.

206 CHAIR COHEN: Interested in trying to find a way that gives you some options.

210 GERTTULA: There is also the law that you just can't let that animal rot.

- Landowner can be charged with a crime by not letting trespassing hunter have the animal and letting it rot.

- In Clatsop County, they take it to the jail and feed it to the prisoners.

225 CHAIR COHEN: What if we take their pickup and guns instead?

226 SEN SPRINGER: That's beautiful.

227 CHAIR COHEN: Maybe that's another way to go about this.

231 GERTTULA: We'd like all the above.

- In Clatsop County, they have more than one rifle and more than one gun. What they want is that elk.

238 BROSANAN: Finishes paraphrasing Exhibit K. Proposes amendments contained in Exhibit K.

266 CHAIR COHEN: Ingrid Swenson had a suggestion of a large fine in lieu of seizing the animal. But if they don't have money, they won't pay the fine.

268 GERTTULA: They're still going to get at trespass laws.

270 BROSANAN: There is still a criminal penalty for the trespass.

276 CHAIR COHEN: Thanks witnesses.

278 SEN. SPRINGER: Anybody else on this one?

279 CHAIR COHEN: Rod Ingram is here.

280 ROD INGRAM, OREGON FISH AND WILDLIFE: Refers to Exhibit L.

- Supports the State Police testimony and the amendments that they suggest.

289 CHAIR COHEN: How much can you take away in the way of forfeiture on the spot?

293 BROSANAN: We can seize any of the weapons or implements that were used in the commission of the crime. There is a question about vehicles. Includes the animal if it is evidence of the violation; however, the animal normally isn't evidence of a second degree trespass.

303 CHAIR COHEN: So the fact they're there is enough evidence to deal with it.



305 BROSINAN: Eye witnesses, our people who are on the scene, whatever.

306 CHAIR COHEN: Anything further to add?

307 INGRAM: No.

- The animal may be returned to the violator by the courts because he may not be convicted; then has to be returned in a good condition.

316 CHAIR COHEN: But if you don't end up seizing the animal at all, then its not part of the evidence. Suppose the cheapest way of disposing it is letting them have it.

- Calls for round up of committee members.

331 SEN. SPRINGER: Do you think we're going to get a quorum?

332 CHAIR COHEN: Try to get it.

- Yes ma'am?

334 (Inaudible)

335 CHAIR COHEN: The response to this little piece of paper here?

- We're in recess until we can see if we can get a quorum.

346 SEN. SPRINGER: Sorry; I was up in the President's office. (Inaudible) . . . check with these folks and see if we're ready to go if we got four votes.

349 CHAIR COHEN: Appreciate your willingness to go up there and check it out.

377 SEN. SPRINGER: The proponents are willing to support the amendments by the Oregon State Police.

383 SEN. BROCKMAN: What do the amendments say?

384 SEN. SPRINGER: They're in the Oregon State Police testimony.

400 SEN. BROCKMAN: They're not going to take the gun, are they?

403 CHAIR COHEN: They can take the gun under current law.

404 SEN. SPRINGER: This doesn't deal with guns though.

405 CHAIR COHEN: This doesn't deal with guns, but they currently can take the gun.

406 SEN. BROCKMAN: But that's a game violation.

407 CHAIR COHEN: Under a game violation and they could take the gun under this circumstance as well.

410 INGRID SWENSON, COMMITTEE COUNSEL: Not aware if they can seize the weapon under current law.

412 CHAIR COHEN: They can't?

413 SWENSON: Not aware.

414 CHAIR COHEN: What can you do under current law with respect to seizing a weapon? And can you seize under your amendments?

420 BROSANAN: Under current law, we can seize the weapon and any implements that were used in the commission of the crime; all this does is allow us to seize the animal.

429 SWENSON: So the crime you're talking about is trespass and the weapon is used in the trespass?

433 BROSANAN: One of the reasons that I asked that ORS 498.120 be added to this section is to clear that up. If added to the section, we can seize whether we charge them with second degree criminal trespass or under hunting on enclosed lands of another.

- If we charge them with second degree criminal trespass (Exhibit M), then we cannot seize the weapon; we can seize the elk with the addition of this bill. If we charge under ORS 498.120, we can seize everything.

457 SEN. BUNN: So this bill does make the change where, under that statute, you couldn't currently seize the weapon, but you would be able to?

462 BROSANAN: No. I just asked if we wanted to go that far.

463 SEN. BUNN: If someone is hunting in an open legal area, they shoot an elk, and it crosses on to private property, can someone go after that wounded animal?

467 BROSANAN: That would be a trespass if they followed the animal onto the private property.

470 SEN. BUNN: So they currently have to let the animal go on the private property and they can't retrieve it.

474 BROSANAN: They have a dilemma. They have the problems of trespass and of waste. In most instances, they go to the landowner, explain the circumstance, and the landowner allows them to trespass to retrieve the animal.

483 SEN. BUNN: So this would make it clear, if they do go through the process, they can get their elk; if they don't ask the landowner and get the elk, they lose that elk.

490 BROSANAN: What this is addressing is the person who hunts on another person's property without permission.

497 SEN. BUNN: Understands what the bill wants to do; just concerned about the legitimate times . . . (inaudible) . . . and notice to the property owner involved.

501 BROSANAN: Under present law, they are required to anyway. This changes nothing in that regard.

TAPE 108, SIDE B

040 CHAIR COHEN: Wants to see where the committee is; we can adopt

these amendments in concept form and go . . .

044 SWENSON: ORS 498.120; that offense occurs on enclosed property, correct?

046 BROSANAN: 498.120 is hunting on another's cultivated or enclosed land. Its criminal trespass under the wildlife code so articles used in the commission of the crime can be seized.

053 SWENSON: Is there private land not covered by 120?

- If its uncultivated and unfenced, it does not come under 120; is that correct?

057 BROSANAN: The definition of enclosed is virtually all lands delineated by some boundary. All private land is delineated to some extent.

SB 451 AND 980

061 CHAIR COHEN: These two bills I'd like to take up in work session today.

SB 930

074 CHAIR COHEN: Would entertain a motion to adopt in concept form the . . .

077 MOTION: Sen. Bunn moves the adoption of the State Police amendments in concept form.

080 SWENSON: It also provides for an amendment regarding the carrying the weapon with the cartridge loaded in the chamber; is that being moved in concept as well?

084 SEN. BUNN: I did not realize that we were dealing with the question of weapons at all.

086 CHAIR COHEN: The bill itself deals with the question of . . .

088 SWENSON: Section four deals with pointing a weapon out of a window. The proposed amendment is broader. Explains the amendment.

093 CHAIR COHEN: And the same landowner exceptions are there as applies to hunters.

097 SEN. BUNN: That was not the intent of my amendment.

098 CHAIR COHEN: Let's hold this over and see where we are.

- Need to know that section four does deal with pointing a loaded rifle out the window.

SB 980

108 SWENSON: The bill restores language removed in 1989 which required notice when a detention hearing was scheduled in juvenile court. There are dash two amendments (Exhibit N). Explains the amendment. Discusses fiscal impact.

128 CHAIR COHEN: Invites Larry OgleSB y to testify.

135 LARRY OGLESB Y, OREGON JUVENILE DEPARTMENT DIRECTORS ASSOCIATION: The fiscal impact is a bit of a mystery. There is not a requirement for the state courts to do this notice; this is done by the juvenile department counsellor or probation officer. It is typically done verbally and only done in writing when if you cannot notify the parent in some other fashion. No fiscal impact if state courts don't have the responsibility to do it.

149 CHAIR COHEN: Wants to move the bill and see what we can do to get that information clarified to see what the real legitimate impact would be.

154 SWENSON: Apparently it is the practice to notify in all cases and due process requires some kind of notice.

159 MOTION: Sen. Hamby moves the dash two amendments.

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

163 MOTION: Sen. Hamby moves SB 980 as amended to the floor with a "do pass" recommendation.

- We'll review the issue of fiscal on the way and try to get that clarified.

168 VOTE: Motion passes unanimously; Sens. Shoemaker and Hill excused.

SB 451

173 SWENSON: The bill would require a pre-sentence investigation be prepared in all felony sex offenses.

179 CHAIR COHEN: Are there amendments?

180 SWENSON: No.

- The fiscal report is not ready.

- For PSI's for offenses occurring after that date, the Criminal Justice Council has established the required contents of those reports. That information would not be sufficient to give very much on the background of the offenders, so it might be necessary to consider directing the sentencing guidelines board or the Council, in connection to PSI's relating to sex offenses, to include the same kind of information that's included in the pre-1989 PSI's.

202 CHAIR COHEN: Wants to take care of that when we get to the bill that gives directions to the guidelines.

- If it has a big fiscal, it will go to Ways and Means. The up or down vote is for this committee.

216 MOTION: Sen. Bunn moves SB 451.

218 CHAIR COHEN: Does that take care of any need for amending, knowing that we might have to fix up something with respect to directions?

220 SWENSON: Yes.

222 CHAIR COHEN: Wants motion to move it "do pass" to the floor with authority to send it Ways and Means either on the floor or, in intervening time, to Ways and Means.

226 SEN. BUNN: That would be fine.

228 VOTE: Motion passes unanimously; Sens. Shoemaker and Hill excused.

232 CHAIR COHEN: Adjourns the meeting at 2:52 p.m.

Submitted by:

Reviewed by:

Mark Thorburn

Committee Counsel

Ingrid Swenson Committee Assistant

EXHIBIT LOG:

A - Testimony on SB 948 - Mark Comstock - 11 pages  
B - Amendments to SB 507 (dash five) - Committee Staff - 2 pages  
C - Amendments to SB 507 (dash two) - Committee Staff - 7 pages  
D - Amendments to SB 881 - Chuck Bennett - 2 pages  
E - Testimony on SB 881 - Elliot Weiner - 20 pages  
F - Testimony on SB 881 - Judy Snyder - 3 pages  
G - Testimony on SB 930 - Henry White - 2 pages  
H - Testimony on SB 930 - Susie Gerttula - 2 pages  
I - Various Materials on SB 930 - Susie Gerttula - 11 pages  
J - Letter from Carol Newman re: SB 930 - Kathy White - 1 page  
K - Letter from Daniel Brosnan re: SB 930 - Daniel Brosnan - 3  
pages L - Testimony on SB 930 - Rod Ingram - 2 pages  
M - Copy of ORS 164.245 et. seq. re: SB 930 - Committee Staff - 1  
page N - Amendments to SB 980 - Committee Staff - 1 page

EXHIBITS NOT REFERRED TO IN HEARING:

O - Copies of Other State Statutes re: SB 881 - Chuck Bennett - 19  
pages P - Copy of ORS 496.60 et. seq. re: SB 930 - Committee Staff  
- 7 pages Q - Memo from Oregon Criminal Justice Council re: SB 451  
- Committee Staff - 4 pages