

**Testimony in Support of SB 55
Before the Senate Judiciary Committee**

February 4, 2013

Thank you Mr. Chairman, my name is Phil Duong. I'm an attorney in Multnomah County and am currently the Director of Knowledge Management at Manzama, a legal technology company based in Bend, Oregon. Prior to Manzama, I served as a Deputy District Attorney for four years with the Deschutes County District Attorney's Office. I'm here today on behalf of the Oregon State Bar's Uniform Criminal Jury Instructions Committee in support of Senate Bill 55.

Senate Bill 55 is a very simple bill that corrects a possible conflict between the statutory requirements on the instruction of juries, and a 1961 Oregon Supreme Court ruling.

ORS 10.095(3) currently requires that trial judges instruct juries that "a witness false in one part of the testimony of the witness is to be distrusted in others". The problem with this language is that the term "is to be distrusted" appears to direct and require jurors to disregard the entire testimony of a witness who was "false in one part" of his or her testimony, as opposed to simply permitting jurors to evaluate the truthfulness of a witness' entire testimony when taking into account that the witness may have been dishonest in one part. The statute as currently written could be construed as interfering with the historical role of jurors as the sole judges of witness credibility. This could, in turn, violate litigants' constitutional rights to jury trials.

In 1961 in *Ireland v. Mitchell* (226 Or 286), the Oregon Supreme Court addressed ORS 10.095(3) and stated that "the jury may reject [such] a witness' testimony, but need not do so." In other words, the court found that although the statute appears to be mandatory, it is actually advisory. Ever since this case, courts have been instructing using the advisory language of *Ireland* rather than the precise language of the statute.

The Uniform Criminal Jury Instructions Committee feels that a strong argument could be made that the statute actually conflicts with the case law, rather than the case law simply being an interpretation of the statute. In order to avoid any further confusion or litigation, the Committee feels that it would be best to simply change the statute to specify that a jury "may" distrust the testimony of a witness who was false in one part of their testimony without seeming to make that distrust mandatory.

This bill was unanimously supported by the members of the Uniform Criminal Jury Instructions Committee, and we are unaware of any opposition. Thank you for your time.