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TO: House Judiciary Committee  
Salem, OR 97301

FROM: John Henry Hingson III

RE: HB 3399

DATE: March 31, 2015

I have been a criminal defense lawyer in Oregon City since 1971. I am the past president of the National Association of Criminal Defense Lawyers and the Oregon Criminal Defense Lawyers Association (OCDLA). Today I speak on behalf of OCDLA in support of HB 3399.

I will first address the bill's change in present practice by requiring a transcript or audio record of all criminal proceedings in justice and municipal courts. That change is long overdue.

Having a "full, complete, and true"<sup>1</sup> record of the proceedings in criminal cases is critical to assure that both the appearance and reality of justice being done is accomplished in those courts. Where there is no record there is the potential for mischief or worse.

Before Oregon unified the state courts, we had Circuit Courts and District Courts. Circuit Courts had court reporters who produced a full, complete, and true record of the proceedings. District Courts had neither court reporters nor audio records available to produce a record of the proceedings.

Having no record in the District Court of Multnomah County District Judge Shirley A. Field contributed to her:

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<sup>1</sup> Language taken from ORS 8.360(2).

- Holding a man “hostage” (the word used by Judge Field) in jail for 5 days for parking violations who explained he was neither the driver nor the owner of the vehicle involved. He asked the judge if he could make a phone call. Judge Field told him he could not. Judge Field convicted the man and sentenced him to jail for the parking violations. The Deputy District Attorney who saw and heard this case reported it to the Oregon American Civil Liberties Union.
- A lawyer from Woodburn appeared before Judge Field and asked if she would accept a plea of guilty on behalf of a client in custody. Judge Field said she could take the plea 5 days later. When asked if she could do it that day, Judge Field warned the lawyer, “Don’t push your luck.” The lawyer explained if she didn’t take the plea that day his client would have to spend 5 days in jail. Judge Field responded, “[I]t couldn’t happen to a nicer guy. I only wish I could put you in jail along with him. Unfortunately, we can’t jail the attorney.”
- A police officer appeared before Judge Field in relation to a DUII citation. The defendant’s name was called but he was not present. Judge Field asked the officer what the breath test result was and he responded “1.8.” (sic) Judge Field found the defendant guilty.
- According to a deputy district attorney, during the year 1976 Judge Field refused to appoint counsel for defendants who agreed to a bench trial in lieu of a jury trial.
- An indigent woman charged with prostitution appeared before Judge Field for trial. The woman and her mother told Judge Field she had no funds to hire counsel. The deputy district attorney told Judge Field an attorney should be appointed. Judge Field refused to do so, found the woman guilty, and sentenced her to 30 days in jail.

Truth is indeed stranger than fiction. The facts stated above were taken from *In the Matter of the Honorable Shirley A. Field*, 281 Or 623, 576 P2d 348 (1978).

In 2014, I was hired to defend a client charged with DUII in the Pendleton Municipal Court. Prior to trial, I filed a motion to permit me to have a court reporter appear to produce a full, true, and complete transcript of the proceedings – at the expense of the defense. That motion was denied.

I then moved for permission to make a tape recording of the proceedings on my personal digital audio recorder. That motion was denied.

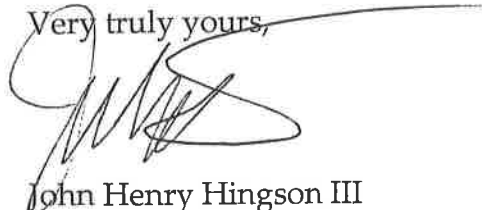
The judge told me that I could have a person make notes about what was said in court. At my client's expense, I brought a paralegal assistant with me to make notes of the proceedings. When trial began, she had her laptop computer out and was told by the clerk that she could not record what was going on in court. Once I alerted the judge to the conduct of the clerk, he allowed my legal assistant to take notes.

The case proceeded to trial, but a mistrial was declared. There was no verbatim record of the testimony, so impeachment by prior inconsistent statements would be futile. On a pretrial motion to dismiss the case on double jeopardy grounds, after I recited my memory of the facts at trial, the prosecutor called me a liar. That was not Selma. It happened in Pendleton in 2014.

The examples related here are but a tip of the iceberg of abuse that can occur where there is no full, complete, and true record of the proceedings. The mere existence of a recording reduces the chance for such mischief to occur. That part of the bill fixes a big problem in our Oregon courts that presently have no record of the proceedings. And, a record reduces the "he said - she said" time consuming conflicts and headaches that inevitably occur where there is no record.

Turning now to the requirement increasing the qualifications of judges in the municipal and justice courts of Oregon, this change is equally welcome. Improving the quality of the administration of criminal justice where liberty is at stake is a goal that is expected by the citizens. Why would anyone want a judge to make an error of law in convicting or sentencing someone for violation of the law? Those who make and enforce the law have the most solemn obligation to follow the law.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Hingson III", with a long horizontal line extending to the right.

John Henry Hingson III