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# CIRCUIT COURT OF OREGON

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April 3, 2015

Representative Jeff Barker
Chair, House Judiciary Committee
900 Court Street NE, H-480
Salem, Oregon 97301

Re: Proposed Amendment to Material Witness Statute

Representative Barker:

I am a Circuit Court Judge in Washington County. I recently presided over the murder trial in State of Oregon v. Eloy Vasquez-Santiago. The case received extensive press coverage criticizing the justice system for holding two material witnesses in jail for in excess of two years. A recent editorial from *The Oregonian* is enclosed.

I write to you as Chair of the House Judiciary Committee and as a member of the Washington County delegation to propose an amendment to the material witness statutes that would avoid this problem in the future.

ORS 136.612 requires that if the moving party proves that a prospective witness possesses information that is material to a pending action and will not appear at trial, the court shall establish a security amount calculated to ensure the attendance of the witness and enter a material witness hold. If no security amount will ensure the attendance of the witness, then inferably no security need be set. In the alternative, if the material witness is a flight risk, a high security may be set which the witness may not be able to post. In either case, the witness will remain in custody until the witness is no longer needed in the action. In Murder or Aggravated Murder cases, the detention will inevitably be lengthy.

As you probably know, there is no statutory provision for depositions in criminal cases or

material witness cases in Oregon. If a judge had discretion to require perpetuation depositions in material witness cases, lengthy detentions of material witnesses could be avoided in the future. In the Vasquez-Santiago case, eventually, as the case took unusual twists and turns delaying the trial, the court suggested and the parties agreed to stipulate to perpetuation depositions of the two witnesses. The witness who consented to participate in the deposition process was released at the conclusion of his deposition.

The quality of video capabilities insures that the presentation of such evidence at trial will be understandable to a jury. Ideally the deposition would be recorded in the same courtroom as the actual trial with the trial judge ruling live on any objections.

Oregon Rules of Civil Procedure 37 provides one example of how such a statute might be modeled. I am confident that Legislative Counsel could refine that statute or craft one anew for application to a material witness situation.

*The Oregonian* editorial suggests two other ways of mitigating the problem: setting a limit on the amount of time a witness may be detained and increasing the per diem payment by the government to the incarcerated witness. Neither suggestion gets to the heart of the issue.

The first suggestion is not meritorious. For example, if an Aggravated Murder prosecution hinged on the testimony of a crucial material witness whatever statutory limit that might be divined by the legislature may not coincide with the amount of time justly needed by the parties to prepare for trial. The second suggestion may be worthy of consideration out of fundamental fairness to an incarcerated person, but it would not meaningfully facilitate the release of a material witness who is needed for a major criminal case.

Feel free to contact me if I can answer any questions or be of any assistance.

Respectfully,

Donald R. Letourneau
Circuit Court Judge

cc: Robert Hermann, President, Oregon District Attorneys Association, Gail Meyer, lobbyist, Oregon Criminal Defense Lawyers Association