

## CONFERENCE COMMITTEE ON HJR 89B

July 14, 1999 Hearing Room 357

4:00 p.m. Tape 2

**MEMBERS PRESENT: Rep. Mannix, Chair**

**Sen. Bryant**

**Rep. Gianella**

**Sen. Courtney**

**Rep. Hansen**

**Sen. Tarno**

**STAFF PRESENT: John Horton, Counsel**

**Patsy Wood, Administrative Support**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
<b>TAPE 2, A</b>		
003	Chair Mannix	Calls the meeting to order at 4:07 p.m.
<b><u>HJR 89B WORK SESSION</u></b>		
004	Chair Mannix	Introduces the 18 amendments to HJR 89B that would disqualify a person from serving on a jury if the person is not registered to vote in Oregon or if the person has been convicted of a felony or served a felony sentence within 15 years preceding the trial ( <b>EXHIBIT A</b> ).
010	<b>Mark McDonald</b>	<b>Deputy District Attorney, Multnomah County</b>  Testifies in support of HJR 89B. Discusses the 18 amendments regarding the rights of search and seizure. These amendments wouldn't change the rules under

		the Oregon Constitution for search and seizure, but would change the remedy that the evidence could not be excluded if it was otherwise admissible under the 4 <sup>th</sup> Amendment.
037	<b>Pete Shepherd</b>	<b>Special Counsel to Attorney General Hardy Myers</b>  Testifies in support of HJR 89B and submits a Department of Justice (DOJ) alternative to the legislation ( <b>EXHIBIT B</b> ). The ñB18 amendments do not apply to juvenile delinquency proceedings while the DOJ alternative would do so. Expresses his concerns about the applicability of evidence.
075	<b>Tim Sylwester</b>	<b>Department of Justice (DOJ)</b>  Discusses the differences between the DOJ alternative and the ñB18 amendments. The ñB18 amendments eliminate the exclusionary rule under Article 1 Section 9 of the Oregon Constitution in criminal prosecutions involving personal victims and that shouldn't present any problems under the revision clause.
130	Chair Mannix	Could we use language stating that "in the prosecution of a crime involving a victim in state court, evidence that would be admissible in a criminal case under the United States Constitution is admissible", instead of saying "shall not be excluded"?
142	Sylwester	You have the same problem because you are trying to tie the substantive scope of Article 1, Section 9 of the Oregon Constitution to the 4 <sup>th</sup> Amendment.
148	Chair Mannix	Suggests stating that "evidence that would be admissible in a criminal case under the United States Constitution shall not be excluded as to any Oregon Constitutional provision".
151	Sylwester	Another possibility would be to say "in the prosecution of a crime involving a victim, evidence relevant to the guilt of the criminal defendant is admissible notwithstanding that it was not obtained in compliance with Article 1, Section 9".
159	Chair Mannix	Why do we have to keep talking about Section 9?
160	Sylwester	You don't have to, but the idea is that evidence should be admitted even if it was obtained in violation of some provision of Article 1 of the Oregon Constitution, if it would be admissible under the federal constitution.
232	Chair Mannix	Could we say that there shall be no exclusionary rule to be independently applied in the State of Oregon in criminal cases involving a victim as to Section 9 of this Article?
234	Sylwester	That is what we tried to do in HJR 91 with a straight forward restriction of the exclusionary rule.

256	Sen. Bryant	Are you stating that there are search and seizure rules for crimes with victims and separate search and seizure rules for victimless crimes?
260	McDonald	You would always have the same rules under Article 1, Section 9. The remedy would be different depending upon whether or not there was a victim of the crime.
266	Sen. Bryant	Is the evidence excluded if it is a victimless crime?
268	McDonald	Yes.
286	Sen. Bryant	Would a "person" crime include a corporation?
288	McDonald	No.
296	Sen. Bryant	If you don't have the exclusionary rule, what is the penalty for violating the search and seizure law?
300	McDonald	By default you would still have the exclusionary rule under the federal constitution.
302	Sen. Bryant	Under the federal constitution, if the court determines that evidence gained in violation will be allowed, is there a penalty?
306	McDonald	Police officers or others who have violated the Oregon Constitutional provision for search and seizure could be subject to a civil suit.
310	Sen. Bryant	Is there a specific statutory right to sue an officer for this violation?
313	McDonald	I don't know of a specific statute, but I do know that officers have been sued.
328	Chair Mannix	What if we said, "in cases constituting homicide, robbery, assault, rape, (a generic listing of personal crimes) Section 9 of this Article does not have an exclusionary rule that would prevent admission of evidence in a criminal case in this state"?
343	McDonald	That would be one way to cover this issue, but it would be clearer if we use the distinction of crimes involving a victim or victimless crimes.
394	Chair Mannix	Adjourns the meeting at 4:35 p.m.

Submitted By, Reviewed By,

Patsy Wood, Sarah Watson,

Administrative Support Office Administrator

**EXHIBIT SUMMARY**

**A - HJR 89B, ñB18 amendments (LC 4238), dated 7/14/99, staff 2 pgs.**

**B - HJR 89B, DOJ Alternative submitted by Pete Shepherd, DOJ, 1 pg.**

**C - HJR 89B, written testimony submitted by David Fidanque, ACLU, dated 7/14/99, 1 pg.**