

SENATE COMMITTEE ON JUDICIARY

June 09, 1999 Hearing Room C

3:00 PM Tapes 223 - 226

MEMBERS PRESENT: Sen. Bryant, Chair

Sen. Courtney, Vice-Chair

Sen. Brown

Sen. Burdick

Sen. Nelson

Sen. Duncan

Sen. Tarno

STAFF PRESENT: Bill Taylor, Counsel

Kathy Courtney, Administrative Support

MEASURE/ISSUES HEARD: HJR 87A - 94A

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
TAPE 223, SIDE A		
003	Chair Bryant	Calls hearing to order at 3:13 PM.
<u>HJR 87A ñ HJR 94A PUBLIC HEARING</u>		
013	Hardy Meyers	State Attorney General Presents an overview of HJR 87A-94A. Discusses the clarity, consistency, constitutional basis of each resolution, and compliance with state and federal laws. (EXHIBITS A ñ G)

097	Meyers	Discusses HJR 89A exclusion based on voting status. Asserts that one's voting status has no bearing on one's qualifications to serve as a juror. Suggests referral of issue separately as a felon exclusion and non-registered voter exclusion.
160	Sen. Courtney	What is your position on amending the Oregon Constitution as opposed to making statutory changes?
176	Meyers	That is a fair debate with a range of issues. Discusses initiative and statutory processes.
194	Sen. Courtney	Do you think these resolutions should be placed on the ballot?
202	Meyers	Yes, as amended by our proposed changes.
215	Sen. Courtney	So the issues belong in the constitution?
216	Meyers	Yes, most of them do.
220	Sen. Burdick	Could some of these resolutions be realized through statute? Does the public demand constitutional changes or the substance?
230	Meyers	That is for the public to answer.
248	Sen. Burdick	The public voted on one subject relating to victims' rights, yet we are giving them eight resolutions in exchange. Could your proposals be accomplished by statute?
251	Meyers	Yes.
285	Sen. Nelson	Explains how HJR 87A makes the Oregon Constitution subservient to statutory rules.
318	Jeff Van Valkenburgh	Assistant Attorney General Presents overview of HJR 87A. Discusses technical amendments needed to remove ambiguity and lessen court challenges.
378	Mark Gardner	Special Counsel to the Attorney General Discusses the legislative history of HJR 87A through 94A.
388	Van Valkenburgh	Discusses the normal rules of evidence. Stresses the need for consistency throughout the resolutions.

407	Gardner	Explains district attorney procedures for ensuring victims' rights throughout criminal proceedings.
TAPE 224, SIDE A		
008	Van Valkenburgh	Discusses the procedure for a victim to request a deposition. Explains that this request does not limit victims' rights.
022	Chair Bryant	Would you address the current due process rights in relation to viewing victims' documents?
026	Gardner	Discusses the necessity to recognize the defendants' rights. Explains that constitutional provisions override statutory provisions.
043	Sen. Burdick	Could any of these resolutions be accomplished by statute?
048	Van Valkenburgh	Yes, all of them could be except for the discovery provision.
050	Sen. Nelson	Clarify the discovery provision, please.
052	Van Valkenburgh	Discusses the due process clause which allows discovery in specific situations.
074	Gardner	The due process clause coincides with current law prohibiting inquiry to the victim for purposes other than discovery.
079	Sen. Duncan	Is this provision contained in current law?
085	Gardner	No, it expands the due process provision to juvenile court proceedings.
100	Sen. Brown	Does the right to refuse an interview deny the defendant discovery?
109	Gardner	Explains that a victim is not required to give an interview deposition to the defendant or anyone acting on behalf of defendant.
114	Sen. Brown	The district attorney would use discretion in seeking out witness and victim testimony, right?
118	Gardner	Generally, but HJR 87A addresses victims' interaction with the criminal justice system.
137	Van Valkenburgh	Presents an overview of HJR 88A which extends district attorney rights to the prosecuting attorney.

157	Chair Bryant	Discusses the right of trial by jury without delay. What does "without delay" mean?
172	Gardner	The terms "without delay" and "speedy trial" are synonymous.
176	Tim Sylwester	Assistant Attorney General Discusses criminal case history. The state has never been denied a jury trial in a criminal case. Explains that a defendant's due process would override the state's right to a trial without delay.
223	Sen. Burdick	Could HJR 88A be accomplished by statute?
229	Sylwester	No. Explains why HJR 88A could only be accomplished by constitutional amendment.
244	Gardner	Discusses HJR 89A which excludes non-registered voters and some felons from the jury pool.
263	Van Valkenburgh	Discusses HJR 90A which relates to posting bail for criminal offenses.
286	Chair Bryant	Explains why including a specific an effective date into statute is ill advised.
291	Sen. Burdick	Could HJR 90A be accomplished by statute?
302	Sylwester	No, a constitutional amendment would be necessary. Discusses rules of evidence procedures relating to search and seizure.
403	Chair Bryant	Discusses the requirements for amending the constitution.
TAPE 223, SIDE B		
011	Sen. Burdick	Would the lockstep provision apply to HJR 91A?
013	Sylwester	No. Discusses the broad effect of HJR 91A.
058	Sen. Tarno	What are the distinctions between Oregon and federal search and seizure laws?
060	Sylwester	Discusses the Armatta decision relating to search and seizure laws, inventory rights, and consent.
083	Sen. Brown	Article 1 Section 9 of the Constitution and HJR 91A duplicates the 4 th

		amendment language. Why?
095	Sylwester	Because Oregon courts broadly interpret Article 1 section 9.
104	Sen. Brown	Should we bind ourselves to federal case law?
108	Sylwester	No. Discusses the rules of evidence.
130	Gardner	Explains the remedy for suppression of evidence. Discusses why the Attorney General's staff has no amendments on the HJR 92A.
200	Sylwester	Contends that HJR 91A and HJR 93A may be unconstitutional because each deals with multiple issues. Compares state and federal law relating to limitations of immunity under the self-incrimination clause.
285	Sen. Brown	Do juveniles currently have the same rights as adults?
290	Sylwester	No, juveniles do not have the right to a jury trial.
300	Sen. Brown	Will juveniles have this right if the resolutions pass?
301	Sylwester	We'll see.
313	Pamela Wood	Assistant Attorney General Discusses HJR 94A which relates to the power of the governor and judicial authority to grant post-conviction relief.
403	Chair Bryant	Does HJR 94A call into question legislative authority to grant post-conviction relief?
413	Wood	Yes.
TAPE 224, SIDE B		
015	Wood	Continues discussion about amending post-conviction sentences as authorized by the sentencing court.
028	Gardner	The legislative body decides the sentencing court's authority.
037	Sen. Burdick	Could the goals of HJR 94A be accomplished through statute?

040	Wood	Yes.
045	Rep. Floyd Prozanski	State Representative, District 40 Testifies and submits written testimony in support of HJR 87A and 90A and in opposition of HJR 89A and 91A. (EXHIBITS I ñ L) Discusses the necessity to include the preamble language in all of the resolutions. Contends that only HJR 87A is victimsí right legislation.
175	Rep. Prozanski	Discusses the necessity for a proper balance between victimsí rights and defendantsí rights. Discusses the proposed state right to a jury trial and jury pool restriction to registered voters.
285	Rep. Prozanski	Discusses Montana law regarding basic principles of criminal justice. Asserts that it is shortsighted to amend the Oregon Constitution instead of making laws.
349	Sen. Brown	Juveniles do not have a right to a jury trial in current law. Why not?
352	Rep. Prozanski	Asserts that the current juvenile justice system works efficiently and should not be compliant with the adult criminal justice system.
TAPE 225, SIDE A		
010	Rep. Prozanski	Continues discussion about resolving the state and federal constitution lockstep issues. Discusses Rep. Mike Lehmanís letter regarding the right to bear arms. Relates personal story about sisterís murder.
150	Sen. Brown	Catching a criminal is the top priority, not search and seizure technicalities, right?
153	Rep. Prozanski	No, because a defendant has not been convicted at the time of search and seizure procedures. Explains that law enforcement must not abridge the rights of others.
229	Doug BeLoof	Lewis and Clark Law School Professor Testifies in support of HJR 91A and 93A. Asserts that exclusion of evidence is always inappropriate.
301	Sen. Brown	Is HJR 91A a well-written legal document?
307	BeLoof	Not exactly, but I question why the Attorney Generalís Office eliminated the exclusionary rule.
324	Sen. Brown	Will HJR 91A face constitutional challenges?

330	BeLoof	Probably. I think all of the resolutions will face constitutional challenges. The Oregon Supreme Court must determine if the exclusionary rule is a remedy. Asserts that a victim's right to a speedy trial is less important than a defendant's right to due process.
407	Sen. Brown	What is your position of the proposed right of the victim to testify at trial? Define "victim."
TAPE 226, SIDE A		
005	BeLoof	The victim is a person harmed. Contends that it is unfair to exclude a victim's information.
015	Sen. Brown	What if the victim's testimony would ultimately hurt the case?
020	BeLoof	No one has the right to judge a victim's testimony as worthy or unworthy. Doing so mirrors past biases against blacks and women.
055	Mona Simon	Concerned Citizen, Murder Victim's Sister Relates personal story of brother's murder. Discusses how the criminal justice system excluded her family from participating and issued a sealed verdict of "not guilty."
132	Sen. Duncan	Why do you think the Clackamas County judge had a political agenda relating to your brother's murder case?
140	Simon	The judge could use my brother's case as a Measure 11 test case.
155	Vice Chair Courtney	Closes HJR 87A ñ HJR 94A Public Hearing. Adjourns meeting at 5:43 PM.

Submitted By, Reviewed By,

Kathy Courtney, Sarah Watson

Administrative Support Office Coordinator

EXHIBIT SUMMARY

- A. HJR 87A hand engrossed amendment, Hardy Meyers, 3pp**
- B. HJR 88A hand engrossed amendment, Hardy Meyers, 2pp**
- C. HJR 89A hand engrossed amendment, Hardy Meyers, 2pp**
- D. HJR 90A hand engrossed amendment, Hardy Meyers, 2pp**
- E. HJR 91A hand engrossed amendment, Hardy Meyers, 2pp**
- F. HJR 93A hand engrossed amendment, Hardy Meyers, 2pp**
- G. HJR 94A hand engrossed amendment, Hardy Meyers, 2pp**
- H. Draft HJR 87A, 89A, 90A and 94A amendments, Hardy Meyers, 9pp**
- I. Written testimony in support of HJR 90A, Rep. Floyd Prozanski, 1p**
- J. Written testimony in opposition of HJR 91A, Rep. Floyd Prozanski, 2pp**
- K. Excerpt from The Oregonian (5/30/99), Rep. Floyd Prozanski, 2pp**
- L. Written testimony in opposition to HJR 91A, Rep. Mike Lehman, 2pp**