

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

April 11, 1997 Hearing Room 357

3:15 PM Tapes 85 - 87

**MEMBERS PRESENT:**

Rep. John Minnis, Chair

Rep. Jo Ann Bowman, Vice-Chair

Rep. Peter Courtney

Rep. Floyd Prozanski

Rep. Lane Shetterly

Rep. Ron Sunseri

Rep. Larry Wells

**STAFF PRESENT:**

Nikola Jones, Counsel

Jennifer Peck, Administrative Support

Sarah Watson, Office Manager

**MEASURE/ISSUES HEARD:**

SB 936A - Work Session

**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.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
<b>TAPE 85, A</b>		
005	Chair Minnis	Calls the meeting to order at 3:27 p.m.

<b><u>OPENS WORK SESSION ON SB 936</u></b>		
018	Steve Doell	President of Crime Victims United (CVU) Submits and reads aloud written testimony in support of SB 936 ( <b>EXHIBIT A</b> ).
038	Rep. Sunseri	How could have SB 936A made a difference in the situation concerning your daughter?
043	Doell	There was evidence that the murder of my daughter was a stranger-to-stranger crime. My daughter was stalked, prior to her murder. I have several pieces of her murderer's writing, referring to dark, violent, and sexual crimes, but only one piece was allowed into evidence. There was one juror who lied during voir dire, and she was the one who held out and drove the end verdict down to manslaughter. At that time, sentencing guidelines were in effect, and a sentence was 18 months. The judge did depart to 36 months, and we thought he was going to serve three years. He ended up serving about 27 months.
059	Rep. Sunseri	Which provisions in SB 936A are the most important for crime victims?
062	Doell	All the provisions are important, but the most important right of the victim is the admission of all relevant evidence. Cites kidnapping cases in Roseburg and Newberg.
084	Steve Kantor	Law professor at Northwestern School of Law at Lewis and Clark College Introduces himself to the committee.
094	Paul Levy	Attorney, metropolitan public defender, and attorney trainer in Portland, Oregon Submits written testimony in opposition to SB 936A ( <b>EXHIBIT B</b> ).
099	Kantor	SB 936A is the wrong way to go.
110	Chair Minnis	Requests that Mr. Kantor reduce his half hour of testimony so others may testify.
115	Kantor	Testifies in opposition to SB 936A.
165	Kantor	Continues testimony. The restitution system should be more effective, and there should be more set dates for trials. Comments on treating everyone in the court system well, especially the victims. Discusses Marbury v. Madison.
215	Kantor	Continues testimony. Discusses Oregon's Bill of Rights. Recent ballot measures have repealed citizen's rights. Discusses his concerns about Ballot Measure 40, section 1(a).
265	Kantor	Ballot Measure 40 is unconstitutional.
276	Rep. Prozanski	Requests that if witnesses are going to make references to Measure 40, they make reference to specific bills and section numbers, so the committee can follow along.
		You can't change the Oregon Constitution, by statute, so we're going to be in

283	Kantor	a position that, unless we repeal this, until the court declares it unconstitutional, I don't see any way around it. A repealing referendum should be sent out to the people to get it into conformance, which will almost assuredly be a ruling by some court, whether state or federal. Discusses section 1(g), relating to the jury pool, which requires that only registered voters be called for jury service in criminal cases. There is a danger that many convictions won't be valid. There is a risk that this provision is unconstitutional.
333	Kantor	Continues testimony. Discusses Strader v. West Virginia, concerning racial minorities. Everyone has the fundamental right to be on a jury.
375	Kantor	Continues testimony. The more people who are involved in our democracy, such as jury duty, the better off we are. Discusses section 1(f) and section six, concerning polygraph tests.
<b>TAPE 86, A</b>		
001	Kantor	Continues testimony. Discusses controlling of evidence in the O.J. Simpson case. Discusses sections two and nine. If this measure had been in effect before 1960, there would have been no search and seizure protections for citizens.
052	Kantor	Discusses a hypothetical situation of search and seizure. Oregonians desire reasonable privacy.
102	Kantor	Continues testimony.
118	Rep. Bowman	Do you have data that explains why Oregon changed the jury system eight years ago?
124	Kantor	My understanding is that they wanted to broaden the jury pool, and there was concern that there might be a constitutional problem with the jury pool.
141	Rep. Bowman	Have you read all of SB 936A?
145	Kantor	I have focused on the bigger picture, but I am familiar with most of SB 936A.
150	Rep. Bowman	Please define "relevant evidence" and "admissible evidence," as used in section one.
155	Kantor	"Relevant evidence" is defined in section six of Measure 40. This is a very broad definition. We should not add sections which could do more harm. Discusses SB 936A and Measure 40, as they relate to one another.
198	Chair Minnis	Do you try criminal cases currently?
200	Kantor	No. I haven't tried a criminal case since 1977.
203	Chair Minnis	I would like our counsel to respond to some of the things you have said, particularly with respect to prejudicial evidence and relevant evidence being admitted into trial, because it is my understanding that Measure 40 doesn't change any of the current processes for the evaluation of that evidence.

212	Nikola Jones	Committee Counsel There is always going to be an analysis of evidence. Even if it is admissible, it still has to be determined whether it is unfairly prejudicial, cumulative, or if it's just going to be a waste of time.
237	Chair Minnis	Do you know how the Oregon Supreme Court might rule?
241	Kantor	I don't know. It's hard to know how section two of Measure 40 will be interpreted. Comments that the drafting of Measure 40 is ambiguous. Not much needs to be done now; it could cause serious harm. A few sentence structure fixes should be done, if need be, but very little needs to be done now.
267	Chair Minnis	So, you disagree with the Attorney General.
272	Kantor	I haven't spoken personally to the Attorney General, but I do disagree with his position because I understand they are supporting SB 936A.
281	Rep. Bowman	Would counsel please re-explain the definition of "admissible evidence?"
283	Jones	There is a rule, in the rules of evidence, indicating that even though evidence is admissible, there is an extra step that a judge has to go through to let it in, and that is determining whether it is unduly prejudicial, a waste of time, cumulative, or potentially confusing to the jury. Based on one of those reasons, the evidence could still be excluded.
297	Kantor	Discusses admissible evidence, as it relates to the statute. This carves a huge hole into the evidence code.
333	Rep. Prozanski	I heard you comment that the Oregon law is different than the federal law, regarding pretext stops. My understanding is that, if an officer has reason to stop a vehicle, be it a taillight out, even though they may have a pretext reason for stopping the individual, under Oregon law, they can do that.
341	Kantor	They can make the stop; I was referring to the entire chain. There are places along that chain, where Oregon law would break it.
350	Rep. Prozanski	Regarding section two, it does appear that the federal Constitution wouldn't prohibit evidence coming in, so long as it is relevant, it would come in. Whatever is in the Oregon statutes is no longer going to control; it's going to be relying on the federal Constitution.
357	Kantor	That's as I understand it, with respect to the relevant evidence. The only limit will be the federal Constitution.
360	Levy	I am going to speak specifically to the pretrial release provisions of SB 936A, and largely to one sentence on pages 13-14 of SB 936A. This section is convoluted and possibly unconstitutional language. The language in SB 936A is similar to that in Ballot Measure 40. Briefly discusses points of his written testimony ( <b>see EXHIBIT B</b> ).
422	Levy	Discusses the burden of proof on the accused. Discusses a 1987 Supreme Court Case, U.S. v. Salerno.
<b>TAPE 85, B</b>		

001	Levy	Continues discussion of the Salerno case.
025	Chair Minnis	Asks for clarification of the points Mr. Levy labeled unconstitutional. In my opinion, the language of the bill does not appear to shift the burden of proof to the defendant. Could you illustrate how that is so?
027	Levy	The statute tells the court how to make decisions. Discussion continues.
061	Rep. Shetterly	Isn't the problematic language on line 44, at the bottom of page 13, really a derivative of the constitutional language?
070	Levy	Yes. This is a derivative of Measure 40 1(a). Line 31, page 13 also says the same thing.
088	Chair Minnis	The court has the prerogative to determine the clear and convincing evidence.
094	Kantor	Discusses burden of proof.
107	Chair Minnis	I'm addressing the politics of Measure 40. Even if a court rules Measure 40 unconstitutional, the people did it for a reason.
118	Kantor	I agree with you entirely. The people have the right to change the Constitution. They can take the whole Bill of Rights out, if they want to. On the other hand, each legislator has a responsibility to consider the constitutionality of every Act that comes before them. Not only is Measure 40 unconstitutional, this statute is overwhelmingly unconstitutional as well.
127	Chair Minnis	Do you believe in sociological law?
128	Kantor	No.
130	Rep. Shetterly	Measure 40 does not contain a severability clause. What is the consequence of that, if it's declared unconstitutional, in part?
136	Kantor	Normally, in such a case, the court tries to do its best to determine what the intent of the people would be. If a small part of it, not central to the main purpose, were declared unconstitutional, they may extract it. It really comes down to the court trying to ascertain the peoples' intent, and salvage what is possible.
147	Rep. Shetterly	If a piece of Measure 40 is found unconstitutional, would the statutory provisions also be considered unconstitutional?
156	Kantor	Some portions would be eliminated, yet some may survive.
176	Rep. Bowman	Would Mr. Sylvester come forward and explain the severability clause to us?
180	Tim Sylvester	Attorney General's Office There is not a severability clause in Measure 40, and much of whether or not a Supreme Court will rule some or all of Measure 40 unconstitutional depends on what the nature of the constitutional ruling is and what the nature of the provision is.
194	Rep. Shetterly	That wouldn't affect SB 936A at all. Would it?
196	Sylvester	That is correct. Comments on the burden of proof on the defendant in section

		1(a).
223	Levy	Comments on due process and the changes under Measure 40.
230	Chair Minnis	You are saying that the drafters were operating under the assumption that Measure 40 is unconstitutional.
236	Levy	Yes.
280	Dave Fidanque	American Civil Liberties Union of Oregon. Submits and summarizes written testimony in opposition to SB 936A ( <b>EXHIBIT C</b> ).
333	Fidanque	Many sections of SB 936A are workable, but not as a whole. Therefore, the rest of the bill should be deleted.
383	Fidanque	Comments on section 14, subsection 5, lines five through nine. Continues testimony.
<b>TAPE 86, B</b>		
001	Fidanque	Refers to section 1(h). Discusses jury votes to find a person guilty, section 25, page 17, lines 25-26.
043	Chair Minnis	If they only have 10 votes for "guilty," they have to stay in the jury room forever, until they come up with the eleventh vote?
046	Fidanque	Discusses change in jury voting, under Measure 40. Discusses section two of Measure 40, as going way beyond victims, and sections nine and 12, concerning search and seizures. SB 936A would set a precedence concerning search and seizures.
088	Fidanque	Refers to section 22, lines 15-31, concerning prosecution. Explains the standard in Oregon, regarding testifying in front of a grand jury.
126	Fidanque	Suggests deleting section 22 from SB 936A. Lists other information he would be willing to provide to assist the committee.
145	Ingrid Swenson	Oregon Criminal Defense Lawyers Association Testifies on behalf of Jim Arneson in opposition to SB 936A. Submits written testimony ( <b>EXHIBITS D through K</b> ). Goes through exhibits one by one.
201	Swenson	Continues testimony.
289	Swenson	Continues testimony.
354	Swenson	Continues testimony.
<b>TAPE 87, A</b>		
010	Swenson	Continues testimony.
033	Chair Minnis	Adjourns meeting at 5:30 p.m.
		*Written testimony submitted for the record by Jesse Wm. Barton of the Oregon Criminal Defense Lawyers Association ( <b>EXHIBIT L</b> ).

Submitted by, Reviewed by,

Lisa Fritz, Sarah Watson,

Administrative Support Office Manager

**EXHIBIT SUMMARY**

**A - SB 936, written testimony, Steve Doell of Crime Victims United, 1 page.**

**B - SB 936, written testimony, Paul Levy, attorney, 4 pages.**

**C - SB 936, written testimony, David Fidanque, executive director of American Civil Liberties Union of Oregon, 10 pages.**

**D - SB 936, written testimony, Ingrid Swenson and Jim Arneson of the Oregon Criminal Defense Lawyers Association (OCDLA), 3 pages.**

**E - SB 936, written testimony, Ingrid Swenson and Jim Arneson, OCDLA, 2 pages.**

**F - SB 936, written testimony, Ingrid Swenson and Jim Arneson, OCDLA, 3 pages.**

**G - SB 936, written testimony, Ingrid Swenson and Jim Arneson, OCDLA, 2 pages.**

**H - SB 936, written testimony, Ingrid Swenson and Jim Arneson, OCDLA, 2 pages.**

**I - SB 936, written testimony, Ingrid Swenson and Jim Arneson, OCDLA, 1 page.**

**J - SB 936, written testimony, Ingrid Swenson and Jim Arneson, OCDLA, 1 page.**

**K - SB 936, written testimony, Ingrid Swenson and Jim Arneson, OCDLA, 2 pages.**

**L - SB 936, written testimony, Jesse Wm. Barton of the Oregon Criminal Defense Lawyers Association, 4 pages.**