

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

April 17, 1997 Hearing Room 357

1:00 pm Tapes 88 - 89

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

MEMBER EXCUSED:

STAFF PRESENT:

Nikola Jones, Counsel

Brian Higgins, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing - SB 936A

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 88, A		
004	Chair Minnis	Calls subcommittee to order at 1:57 pm
<u>SB 936A - PUBLIC HEARING</u>		

009	Chair Minnis	Opens public hearing on SB 936A
013	Celia Nunez-Brewster	Executive Director, Oregon Commission on Hispanic Affairs >submits and reads written testimony and informational materials, (EXHIBIT A) in opposition of SB 936A
062	Nunez-Brewster	Continues testimony
075	Mike Phillips	Oregon State Bar, submits and reads written testimony, (EXHIBIT B) in opposition to SB 936
120	Phillips	Continues testimony
170	Rep. Courtney	Asks if he testified before the Senate Crime and Corrections committee
171	Phillips	Responds no, they wanted to wait until the Board of Governors met
176	Rep. Courtney	How did this information filter to you?
179	Phillips	Some came from concerned members, some has come from internal analysis and also from the Board of Governors.
188	Rep. Courtney	Asks about the Oregon State Bar's participation in the drafting of SB 936A
189	Phillips	Responds that they did, but their capacity was focused on the policy
205	Dee Dee Kouns	Crime Victims' Advocate >testifies in support of the measure. >Our government is selected by voters, and if you do not choose to vote then you will lack representation. >Those who do not vote are disinterested, disenfranchised, irresponsible, or hostile. >comments on disproportionate numbers of minority victims
255	D. Kouns	Continues testimony >Minorities are generally concerned about their communities. >Why do we need to give criminals more rights?
305	D. Kouns	Continues testimony >Is it worth it to not have convenience of sobriety check-points to allow people to be killed by drunk drivers? >relates story of her daughter's murderer

355	D. Kouns	Continues testimony >Are our privacy concerns so great that we allow people to drive through three states with a dead body in their trunk?
405	D. Kouns	Continues testimony >I am insulted that people think they have the right to talk about the rights of victims. >Victims of all people want the guilty to be prosecuted and convicted.
TAPE 89, A		
001	D. Kouns	Continues testimony >Victims are the last ones who want just anyone convicted.
020	Bob Kouns	Crime Victims' Advocate >testifies in support of the measure. >My understanding is that this bill is to implement a policy decision the people made last November. >Every time we come before a committee, there seems to be a division about our civil liberties. >Let's think about the liberties of the actual victims of the crimes. >There is an incredible frustration among crime victims when information goes into the federal court but can't come into our courts.
080	Dianne Middle	Chairperson, Board of Parole and Post-Prison Supervision >submits and reads written testimony, (EXHIBIT C)
092	Nikola Jones	Counsel >clarifies that Ms. Middle is referring to the -5 amendments
094	Middle	Continues testimony
125	Mark Gardner	Attorney General's Office >testifies in support of SB 936A >comments on some misstatements from Mike Phillips >To say that SB 936 undoes this Anglo-American tradition is simply incorrect.

		>There will be some protection against meritless issues in the courts.
173	Gardner	Continues testimony >A distinction must be made between the statute and how the gathering of the evidence took place. >In the cases of law office searches, there is nothing that prevents the legislature from making this a crime or creating a civil right of action.
200	Rep. Shetterly	In reference to Section 1, line 7, Mr. Gardner stated that that language was derived from the measure, but I see some distinctions. Can you comment on what is happening with the language there?
218	Gardner	Defers the question to Norm Frink
212	Norm Frink	Multnomah County District Attorney's Office >The legislative history has made clear that the judge, despite the relevant evidence, would have the ability to exclude certain things aside from the evidence code. >The wording of Section 1 is designed to make the language clear. >The slightly different wording was intended to bring reassurance to those people who believed that article to be ambiguous.
257	Rep. Shetterly	My understanding is that the explanatory statement is the only relevant legislative history.
266	Frink	I do not understand that there is a limitation on legislative history when I there were statements of legislative intent from the proponents in the voter's pamphlet.
282	Rep. Shetterly	If that is true, then that is different than what we were told by the Attorney General in the Revenue Committee.
285	Frink	I think my argument would be even more persuasive if that wasn't the case. >Section 1, line 10 refers to the state constitution or the federal constitution. >Section 1 is what was intended by the proponents of the measure and drafters of the bill, and it will not get rid of the exclusionary rule.
332	Rep. Shetterly	My only concern is that we are trying to implement the measure, and it strikes me that the restructuring is different than the measure and the explanatory statement. I am trying to judge what the impact is of the changed language.
350	Frink	The language is narrower. It is helpful in clarifying policy concerns.
369	Tim Sylvester	Attorney General's Office, Appellate Division >The purpose of section 1 is intended to not make evidence

		inadmissible solely on a statutory violation.
387	Rep. Shetterly	Asks for clarification of relevance versus admissibility
389	Sylvester	Evidence must be relevant or otherwise admissible. If the question of admissibility is solely based on a statutory violation, this is not an affirmative basis for admission of evidence that would otherwise be inadmissible.
402	Chair Minnis	Asks the Attorney General to speak
409	Hardy Myers	<p>Attorney General</p> <ul style="list-style-type: none"> >testifies in support of the measure >comments on the participation of the Department of Justice with the measure >personally did not support Ballot Measure 40 >It is my conviction that the people became entitled to have their policy judgments, as reflected in the measure, carried out.
TAPE 88, B		
001	Myers	<p>Continues testimony</p> <ul style="list-style-type: none"> >This is not a wholly new initiative. >The reason why this bill does not contain sunset provisions is because it is intended to implement the will of the people. >discusses deliberations which resulted in the bill >A sunset clause was agreed upon for the jury pool selection element.
046	Gardner	At the Attorney General's request, I intended to speak to the Chief Justice for a way to increase voter registration and expanding the jury pool.
054	Myers	Because of these special concerns, a sunset clause was inserted. The bill is faithful to the criteria and the measure
065	Rep. Prozanski	Asks about the sunset clause in Section 19 in regards to pre-trial release
074	Myers	Responds that he does not interpret it to be a sunset clause
078	Gardner	The reason there is an alternative provision in that section is because there was a belief that there needed to be some bail amount.
	Rep.	

085	Shetterly	Asks about legislative history of the ballot measure
092	Myers	Comments on role of explanatory statements for legislative history >Under the rules of construction under the Supreme Court of Oregon, the court would not reach an external source in Ballot Measure 47.
100	Rep. Shetterly	Comments about the explanatory statement
100	Myers	Agrees with Rep. Shetterly's comments
101	Rep. Bowman	Asks about section 22, page 15, lines 20-22 and witnesses testifying and giving purposeful untruths while not being prosecuted for such
115	Myers	I've discussed the transactional versus use and derivative use immunity. Asks for Mr. Sylvester to come up and explain it
117	Rep. Bowman	Responds that they were the ones who didn't give me an adequate answer previously
118	Sylvester	In the middle of Section 22, it says the witness may be prosecuted for perjury. >conforms current immunity practice to Measure 40 >compels witness to testify under the Fifth Amendment >Transactional immunity means that a witness cannot be prosecuted no matter how the evidence was obtained.
155	Chair Minnis	Asks for examples
157	Sylvester	If a person invokes the Fifth Amendment, the State must promise the witness that whatever is said will not be used against him in a criminal prosecution. >comments on use and derivative use immunity >Derivative use of immunity means that prosecutors can use evidence recovered by some other means. >Transactional immunity will no longer be required.
202	Chair Minnis	Clarifies Mr. Sylvester's testimony
203	Sylvester	We tried to draft this in the most neutral language possible
209	Chair Minnis	That is an important statement.
211	Sylvester	This is so we do not have to change the statute again.
212	Rep. Bowman	I was almost with you there. Let me try to understand. This language coincides with Measure 40, is that correct?
219	Sylvester	Responds that it doesn't

221	Rep. Bowman	So, if Measure 40 is struck down, it reverts back to what?
225	Sylvester	It reverts back to transactional immunity.
233	Rep. Prozanski	In reference to section 22, if we go into a use derivative, would this require taping of grand jury proceedings? Have you looked at this?
247	Sylvester	Clarifies that Rep. Prozanski is talking about situations where someone is compelled to provide testimony in a grand jury proceeding over Fifth Amendment objections
250	Rep. Prozanski	I'm talking about witnesses using use derivative immunity. It's my understanding that the federal requirement a taping of that testimony.
260	Sylvester	It may well be that if you are compelling someone to provide testimony it would make sense to tape the testimony.
275	Rep. Prozanski	In reference to section 19, page 15, subsection B in bold print, can you tell me what the basis of that portion is?
284	Sylvester	It is a conjunction of a couple of constitutional provisions. A defendant can be released prior to trial on bail except for murder or treason. It is an attempt to meld what is already being done with murder and treason.
297	Rep. Prozanski	What I have been trying to do is go through each section and relate it to Measure 40.
303	Frink	A portion of Measure 40, section 1A, says that a person arrested for a crime which the people have set a mandatory minimum sentence for, may not be released before the trial. >Section 19, page 13, line 15 attempts to amend the existing release statutes to enact that section into law.
322	Rep. Prozanski	Are there any other sections that would interrelate with section 19?
328	Sylvester	If I understand correctly, under current law, there is a bail hearing.
349	Chair Minnis	Declares subcommittee adjourned at 3:16 pm

Transcribed by, Reviewed by,

Gina Cross, Nikola Jones,

Administrative Support Counsel

EXHIBIT SUMMARY

A - SB 936A, written testimony, Celia Nunez-Brewster, Oregon Commission on Hispanic Affairs, 9 pp.

B - SB 936A, written testimony, Michael Phillips, Oregon State Bar, 2 pp.

C - SB 936A, written testimony, Dianne Middle, Board of Parol and Post-prison Supervision, 2 pp.

D - SB 936A, testimony submitted for the record, Mark Gardner, Attorney General's Office, 1 p.

E - SB 936A, testimony submitted for the record, David Fidanque, ACLU-Oregon, 1 p.