

—

SENATE COMMITTEE ON CRIME & CORRECTIONS

March 21, 1997 Hearing Room B

1:00 P.M. Tapes 42-43

MEMBERS PRESENT:

Sen. Shirley Stull, Chair

Sen. Jeannette Hamby, Vice-Chair

Sen. Eileen Qutub

Sen. Veral Tarno

Sen. Cliff Trow

MEMBER EXCUSED: Sen. Avel Gordly

STAFF PRESENT:

Nikola Jones, Counsel

Julie Clemente, Administrative Support

MEASURE/ISSUES HEARD:

Public Hearing & Work Session: SB 936

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 42,A		
004	Vice-Chair Hamby	Opens meeting at 1:12 p.m. in the absence of Chair Stull
<u>OPENS WORK PUBLIC HEARING ON SB 936</u>		
071	Tom Cropper	Cable Access Producer, Multnomah Activists Solutions. Testifies in opposition to SB 936. Recommends the dropping of lines 22 and 23 on page 17 of the bill. Discusses that it would be unwise to convict for murder on less than concurrence of 12 of 12 jurors. Asks that we do not create more victims by lowering legal standards. Suggests that the sponsors lied to the public about the true intent of this measure. Submits newspaper articles as proof of his beliefs. [Exhibit B]
108	Sen. Qutub	Questions for clarification regarding jury tampering.
119	Cropper	Replies. Quality of representation in courts is so poor . Explains.
149	Paul Levy	Oregon Defense Lawyers Association. Presents written testimony on The Pretrial Release Provisions of SB 936. [Exhibit C] >Release provisions of SB 936 fundamentally alter the Oregon law in place since 1973. >Public safety concerns and protection of the victim are embodied in current law.
192		Discusses unconstitutional provisions. >proposed legislation attempts to deal with crimes called Ballot Measure 11 offenses. >court rulings on Measure 40 have relied upon United States v. Salerno >proposed legislation is conspicuous for its provision that puts the burden of producing evidence upon the State
244		>third and final clause of the release provisions of Measure 40 violates the due process guarantees of the Fifth and Fourteenth Amendments.
301	Levy	Dubious law produces dubious language. Explains.
323	Sen. Trow	Likely to be facing litigation on these unconstitutional provisions?
	Levy	Replies. Ballot Measure 40 has been widely litigated. Continues.

	Sen. Trow	Continues for clarification. Has this particular thing be litigated
	Levy	Yes. Explains.
	Sen. Trow	Continues asking witness for clarification
372	Sen. Trow	You think it is mistake to pick it up in the bill?
	Levy	Yes. Explains. >don't try to get him off, try to get him convicted of the appropriate degree of offense
421	Chair Stull	Addresses question to Counsel Jones regarding the Attorney General's testimony in which they believed this bill in its entirety was constitutional.
	Nikola Jones	Committee Counsel. The Attorney General does hold that opinion. Continues.
430	Steven Jacobson	Attorney, Oregon Defense Lawyers Association. Testifies in opposition to SB 936. Reviews his background for the Committee. Discusses Section 22 of SB 936 regarding immunity.
TAPE 43, A		
033	Jacobson	Discusses what sort of immunity should be given to people whose testimony is compelled. >transactional immunity statute >doesn't happen often that people are granted immunity then prosecuted - continues
119	Jacobson	>safeguards in the federal system are not in effect in Oregon - explains >don't require grand juries be recorded >use immunity
140	Sen. Trow	Do you suggest an amendment?
	Jacobson	Problem is caused by that whole section. Explains. >back to use and derivative use immunity
152	Sen. Trow	Addresses the Chair. Had we considered a possible amendment to do that?
	Chair Stull	Not aware of an amendment pending.
160	Sen. Trow	Is there a feeling we should do away with grand jury hearings?
	Jacobson	I don't know.
	Sen. Trow	Grand jury hearings in the federal courts?
	Jacobson	Yes. Explains.
		State Public Defenders Office. Representing the Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 936. Discusses the sentencing provisions of SB 936. Sections 26 and 27 direct the Oregon Criminal Justice Commission to amend OAR 213-08-007 and

182	Jesse Barton	OAR 213-12-020 to omit sentencing limit on consecutive sentencing involving crimes that have different victims. Section 28 suspends legislative approval requirement of rule amendments adopted by the Oregon Criminal Justice Commission in sections 26 and 27. >law is already written that complies
		>Suggests: sections 26 - 28 go beyond what the victims rights initiative does - explains >bills summary should be amended to read: "implements and expands on victims rights initiative"
317	Jim Arneson	Oregon Criminal Defense Lawyers Association. Testifies in opposition to SB 936. Discusses section 29 of the bill - portion that amends the evidence code with respect to prior bad acts. Provides additional information on issues discussed at prior hearings suggesting the appropriate steps to be taken with respect to SB 936. Talks of the opposition to this amendment and Measure 40. States reasons for the opposition. It will allow introduction of evidence against defendant that is not now allowed and it is written solely in terms of the defendant. Discusses that the evidence law must be even handed.
464	Arneson	Refers to testimony at previous hearings regarding the impact of SB 936 will have on the racial disparity in the jury. Provides statistics showing what that impact to be. [Exhibit D]
TAPE 42, B		
036	Arneson	Discusses the issue of narrowing the jury pool to registered voters and the disparate impact on minorities. States that statistics in the Oregon Population/Jury Pool/Arrest/Conviction Comparisons [Exhibit D] are not current in nature, most recent being 1994. References [Exhibit E] - Statistics on what other counties have done with Measure 40.
078	Chair Stull	Questions population figures for clarification referencing high migratory population in portions of the state.
	Arneson	Replies. Had the same question, but failed to follow for answer.
091	Chair Stull	Questions lack of information regarding "Other Minorities" category.
100	Adrienne Diedrich	Intern, Oregon Criminal Defense Lawyers Association. Information regarding registered voters in Oregon was very limited.
	Sen. Tarno	Questions population statistic
	Diedrich	1994 Almanac of American Politics. Explains.
118	Sen. Qutub	Questions the number of voting age individuals in the population.
	Diedrich	Registered drivers age 18 and above
131	Chair Stull	References source document. Did it cite where they obtained their information and did you use any other publications?

	Diedrich	Replies.
146	Sen. Trow	Questions exhibit statistics.
	Arneson	Speaks of their intent to show that if not tried by a jury of peers, there may be disparate results.
166	Chair Stull	Questions why two different sources were used with information from two different years.
	Diedrich	1995 Uniform Crime Reports does not have convictions in the State of Oregon. Explains.
	Chair Stull	Continues to question Diedrich for clarification regarding lack of direct correlation in statistics.
206	Sen. Qutub	Were there 1994 Oregon Uniform Crime Reports?
	Diedrich	No. Explains.
	Sen. Qutub	Continues questioning for clarification and relevance.
	Sen. Tarno	Annual publication.
220	Arneson	Offers to obtain information.
257	Sen. Trow	Continues discussion with Chair regarding research
259	Chair Stull	Breakdown of those who pled guilty?
	Diedrich	No.
254	Arneson	Refers to [Exhibit E] - Summary of Measure 40 Judicial Decisions/Opinions Received by OCDLA (Oregon Criminal Defense Lawyers Association). This document relays information by OCDLA's members around the state. Summarizes document.
300	Sen. Trow	Are we expecting the Oregon Supreme Court to make some final ruling?
	Arneson	Yes. Explains.
	Sen. Trow	Continues questioning for clarification
322	Sen. Hamby	Severability clause?
	Arneson	No.
322	Arneson	Summarizes. Discusses the challenging technical issues that have been discussed by the various witnesses. These issues are the breath and depth of this bill and require this kind of analysis. Asks that the Committee only go forward with the measures dealing with sentencing - Sections 14 through 16 immediately. Explains
384	Norm Frink	Chief Deputy District Attorney, Multnomah County. Here to answer any specific questions regarding SB 936.
372	Chair Stull	Questions Levy's testimony regarding burden of proof.
	Frink	Believes Mr. Levy misread the provision of the bill. - no burden of proof as far as burden of ultimate persuasion - explains

		>just requires the court make such a finding >place a clear requirement on the state to come forward with evidence
432	Timothy Sylwester	Department of Justice, Appellate Division. Discusses the fact that Measure 40 expressly protects the defendants rights in the federal constitution. Continues. >neither Measure 40 or SB 936 creates any sort of presumption of future dangerousness. - continues
TAPE 43, B		
033	Sen. Trow	References Levy's testimony stating that the burden of proof should be on the government, not on the accused. Levy further suggested a change in wording might be fairer. Why not put the burden of proof on the court?
	Lesh	Replies. The present statute with its numerous procedural safeguards is fair. >reason you cannot change the language, is that the language is now law in the State of Oregon.
056	Sen. Trow	Continues for questioning Lesh for clarification. >You and he disagree on this.
	Lesh	Correct, we disagree.
068	Chair Stull	Please address Section 22, the immunity issue.
	Sylwester	Section 2 of the bill does not change it from transactional to use and derivative use immunity. Explains. >phrased this way so that it will be either transactional immunity or use and derivative use immunity depending on what ultimately happened with Measure 40. Continues. >provision was drafted very carefully to make it whatever was constitutionally required
092	Chair Stull	Explain the consecutive sentences issue. Sections 26 through 28.
	Lesh	Explanation of Article 1, Section 42 was unduly narrow. Explains. >there can be massive differences under the sentencing guidelines
	Sylwester	Gives an example of the way the current rule works.
123	Chair Stull	How does this bill affect the rape shield law?
	Lesh	No effect.
	Sylwester	No effect. Explains.
		President, Crime Victims United. Testifies in support of SB 936. Discusses the fact that for years she has heard people who defend criminals knit-pick any and every law that does not help their criminal defendants. Discusses the strategy of dividing the issues into sections,

138	Dee Dee Kouns	each witness objecting to one section. This leads to confusion of people who do not understand how Oregon's law has been changed. Continues. >Oregon has expanded many rights to criminals >jury issue - rarely found a black person in Portland not registered >victims are interested in justice
220	Kouns	Discusses a mistake in the study - What happened to minority victims?
256	Sen. Trow	Comments. Agrees that we want justice in the system for all. >fair trials and balanced juries
	Kouns	Comments on statistics of crime, arrests and numbers sent to prison.
<u>CLOSES PUBLIC HEARING ON SB 936</u>		
<u>OPENS WORK SESSION ON SB 936</u>		
294	Sen. Qutub	MOTION: Moves to ADOPT SB 936-1 amendments dated 03/12/97.
	Sen. Trow	Questions for clarification regarding SB 936-1 amendments
308	Nikola Jones	Committee Counsel. Explains SB 936-1 amendments. [Exhibit A]
331		VOTE: 5-0 AYE: In a roll call vote, all members present vote Aye. EXCUSED: 1 - Sen. Gordly
	Chair Stull	The motion CARRIES.
341	Sen. Qutub	MOTION: Moves SB 936 to the floor with a DO PASS AS AMENDED recommendation.
321		VOTE: 4-1 AYE: 4 - Hamby, Qutub, Tarno, Stull NAY: 1 - Trow

		EXCUSED: 1 - Gordly
	Chair Stull	The motion CARRIES. CHAIR STULL will lead discussion on the floor.
<u>CLOSES WORK SESSION ON SB 936</u>		
336	Chair Stull	Reminds Committee of meeting scheduled for March 26th at 5:15 p.m. >Scheduled regular evening meetings beginning March 31st >work sessions
	Chair Stull	Declares meeting adjourned at 2:55 p.m.

Submitted by, Reviewed by,

Julie Clemente, Nikola Jones,

Administrative Support Counsel

-

EXHIBIT SUMMARY

A - Proposed SB 936 - 1 Amendments - Staff - 1 pg

B - Testimony in Opposition to SB 936 - Tom Cropper - 3 pgs

C - Testimony in Opposition to SB 936 - Paul E. Levy - 4 pgs

D - Oregon Population Comparisons - Jim Arneson - 2 pgs

E - Summary of Measure 40 Judicial Decisions/Opinions - Jim Arneson - 3 pgs
