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CONFERENCE COMMITTEE ON
HB 2682

June 6, 1995 Hearing Room 357
11:30 AM Tape 1

MEMBERS PRESENT:

Rep. Del Parks, Chair
Rep. Kevin Mannix
Sen. Randy Miller
Sen. Peter Sorenson
Sen. Shirley Stull
Rep. Veral Tarno

STAFF PRESENT:

Holly Robinson, Counsel
Sarah Myers, Assistant

These minutes contain materials which paraphrase and/or summarize
statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings,
please refer to the tapes.

TAPE 1, A

006 CHAIR REP. PARKS: Convenes the conference committee on HB 2682 at 11:33
AM.

-Discusses the two conflicts which brought about the need for the conference
committee; the first conflict was regarding a "lesser included offense".

-Introduces the -4 amendments [EXHIBIT A]; explains that these amendments
are intended to address the single issue of the methodology the courts to
instruct the jury on how to consider the "lesser included offense".

024 SEN. SORENSON: Does this House -A4 amendment change section 8 of the
Senate passed bill?

028 CHAIR PARKS: There are really three issues here. The first is the
issue of how the courts instruct the jury, second is how the courts pull
the jury, and third is the issue of reconsideration.

050 FRED AVERA, POLK COUNTY DISTRICT ATTORNEY: Discusses the -4 amendments.
Explains what the amendment does.

063 CHAIR PARKS: Not all courts instruct that the jury is to consider the
principle charge. Explains when the juror might deliberate all of the
elements of a charge and act upon those findings.

069 AVERA: I believe that the -A4 amendments to HB 2682, restates the
Uniform Jury Instruction as it currently exists.

072 CHAIR PARKS: Except that the Uniform Jury Instruction is not required
to be given. This requires the court to give the instruction.

077 AVERA: The bill could handle that problem with the amendment if it did
not delete subsection 3 of section 8. This would mandate an order of
deliberation in the jury room, allow the jury to come back with the
"lesser", but then allow a determination whether or not they have properly
done that. If they have it would then permit the court to direct the jury
to make a proper consideration.

087 CHAIR PARKS: That is a major change; I don't feel its appropriate to
make such a change in such a short period of time which we have here.

098 AVERA: One suggestion which I have, as you stated, is the over
generation of mistrials. One way to avoid that is if section 3 were to be
left in, but if resubmission on the greater charge was at the option of the
prosecutor, and if I were happy with the verdict, then the jury could go
home.

102 JIM ARNESON, OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: My preference

is for the current law, which allows the defense to present an instruction that the judge instructs the jury that they may consider the "lesser included offenses" in any order because it is within the jury's province. This amendment is a step back from the way in which it is now. This requires the judge to instruct the way State Vs. Ogden read. However, I prefer this version.

120 CHAIR PARKS: Oregon enacted a law that said we cannot use any money to enforce a naturalization law as the United States; this is contained in ORS

181.850. This amendment abolishes that requirement. It leaves the police to use the resources for whatever they choose.

131 MOTION: REP. MANNIX: Moves to ADOPT the HB 2682-A4 amendments as conceptually amended on line 12 changing "a juror" to "the jury".

143 VOTE: 6-0
AYE: All conferee's present vote aye.
NO: None.

CHAIR PARKS: The MOTION CARRIES.

148 MOTION: REP. MANNIX: Moves that the House concur in the Senate amendments dated May 25, 1995 and that the bill be amended as follows and repassed.

VOTE: 6-0
AYE: All conferee's present vote aye.
NO: None

CHAIR PARKS: The MOTION PASSES.

CHAIR REP. PARKS and SEN. SORENSON will lead the discussion on the and Senate Floors respectively.

House

159 The conference committee on HB 2682 is adjourned at 11:46 AM.

Submitted by, Reviewed by,

Sarah A. Myers Holly Robinson
Committee Assistant Counsel

EXHIBIT SUMMARY:

A - Dash A4 amendments to HB 2682 -- Staff -- 1 page.