

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.

HOUSE COMMITTEE ON JUDICIARY CRIME AND CORRECTIONS

April 17, 1991 Hearing Room 357 1:00 p.m. Tapes 84 - 86

MEMBERS PRESENT: Rep. Randy Miller, Chair Rep. Ray Baum Rep. Judy Bauman Rep. Tom Brian Rep. Rod Johnson Rep. Tom Mason Rep. Del Parks Rep. Ron Sunseri

VISITING MEMBER: Rep. Kelly Clark

STAFF PRESENT: Greg Chaimov, Committee Counsel Kathy Neely, Committee Assistant MEASURES CONSIDERED: HJR 33 PH (Oregon Constitution) HJR 49 PH (Criminal Law) HJR 55 PH (Criminal Law) HJR 34 PH (Criminal Matters) HJR 54 PH (Rights of Victims)

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TAPE 84, SIDE A

003 REPRESENTATIVE MILLER, CHAIR: Calls meeting to order at 1:00.

PUBLIC HEARING ON HJR s 33, 49, 55, 34, and 54 Witnesses: Robert Kouns, Crime Victim's United Barbara Stoeffler, Oregon MADD Rep. Bill Markham Cecil Edwards, Legislative Historian Rep. Kelly Clark Doug Beloff, Crime Victims Assistant Network Claudia Burton, ACLU of Oregon David Schuman, OCDLA Jack Ranson, ACLU of Oregon Stephen Kanter, OCDLA Shawn McCrea, OCDLA Mildred Carmack, Citizen

033 ROBERT KOUNS, CRIME VICTIM'S UNITED: Introduces self and gives personal history regarding murder of daughter.

034 GREG CHAIMOV: Discusses the Joint Resolutions. All deal with Article 1, Section 15 of the Oregon Bill of Rights which provide that criminal laws are for reformation of criminal and not for revenge. \*HJR 33, 49, and 55 amend just Section 15. \*HJR 33 and 49 repeals reformation with requirement that criminal laws be for the protection of society. \*HJR 55 adds protection of society and leaves in reformation language. \*HJR 34 and 54 repeal Section 15 in entirety and add victims bill of rights. \*HJR 54 has a more substantial listing of victim's rights. HJR 34 has "crime fighting tools" that are not included in HJR 54. \*The fiscal impacts analyze the cost of printing the measures not the effect if passed by the voters. All are around \$24,000.

079 KOUNS: Discusses the history of victims' rights in the state. EXHIBIT A: Ballot Title (for HJR 34 and 54). \*Discusses the issue of re-offense by people coming out of prison. \*HJR 33 leaves out the issues of reformation. Suggests reformation is important and should not

be eliminated. Victim's rights should be added. \*Urges leaving issue of rehabilitation in the Oregon Constitution.

140 REP. SUNSERI: Asks for definitions: rehabilitation and reformation.

141 KOUNS: Reformation: making someone into something different than what they were. Rehabilitation: to return to previous style which is not desired. \*Recommend voting no on HJR 33, 49, and yes on HJR 55. Should put issue of protection of society first and reformation second. \*Discusses difference between HJR 34 and 54. Urges rejection of HJR 54. Urges yes vote on HJR 34 with exception of paragraph 1 which eliminates Article 1, Section 15, will essentially have the victim's rights initiative. \*The difference between HJR 34 and 54 is relevant evidence. \*Explains re-victimization during the court process.

241 REP. BRIAN: Regarding HJR 54 seems to be a "victims rights type of bill". Asks about recommendation on rejecting it outright.

253 KOUNS: HJR 54 limits exclusionary rule. Trying to draw comparison between HJR 34 and 54. \*Sub 2 of HJR 34 are rights conferred on victims.

280 DOUG BELOOF: The difference between HJR 34 and 54 is in the area of search and seizure and statements by the defendant. \*Oregon Constitution will be interpreted consistent with the US Constitution in those two areas. \*Comments on opinions of the Oregon Supreme Court beginning in 1973 began expanding the exclusionary rule. \*Goal of HJR 34 is to limit the exclusionary rule in Oregon to the federal standard.

312 REP. BAUM: Subsection 2 states the "rights conferred on victims of crimes by this section shall be limited only to the extent required by the US Constitution". \*To state that the rights conferred on victims of crimes shall not be construed more broadly than required by the US Constitution misses the mark. Exclusionary rule limits the state's ability to use evidence seized against criminals in a trial and nothing to do with victims.

327 BELOOF: Disagrees. If evidences obtained in discovering a murder is collected improperly, it is excluded from the trial. If that is the evidence necessary to prove the case, the victim is directly effected, cannot seek remedy of the state for injury done to a member of family.

344 REP. BAUM: The resolution does not state anything about the exclusionary rule. It is the rights of victims.

BELOOF: Directs to Section 3. Section 2 states that the rights in the resolution cannot be interpreted in violation of the US Constitution, will limit any rights granted to victims. \*Should be discussing Section 3.

372 REP. PARKS: Is Section 2 the only difference between HJR 34 and 54?

374 BELOOF: Understands HJR 54 adds right to due process, restitution.

382 REP. PARKS: Is there objection to those?

BELOOF: Objects to right to civil compromise because it should not be granted in all cases. \*Explains civil compromise, a civil settlement for a case. \*Since this is drafted as a Constitutional provision it would be dominate over statutes and include every crime.

TAPE 85, SIDE A

006 REP. BAUM: Discusses civil compromise.

BELOOF: Can civilly compromise all misdemeanors and some C felonies.

REP. BAUM: Can object in felonies?

BELOOF: DA has no power to object. The court does not have to follow recommendation.

013 REP. PARKS: The only objection is the civil compromise with HJR 54?

BELOOF: Yes.

016 REP. PARKS: Understands Mr. Beloof to say HJR 54 and HJR 34 are the same except for the language regarding tie to the US Constitution.

BELOOF: On HJR 34 if kept all provisions and incorporated some provisions from HJR 54 it would work.

026 GREG CHAIMOV: Asks Mr. Beloof on either HJR 34 or 54, there is language that the victim has the right, in a criminal prosecution, to a public trial without delay with impartial jury. Does that mean the victim can override a plea agreement and force a case to go to trial?

BELOOF: No, means if a case is going to trial, the victim can have a jury trial instead of a court trial. Gives victim a right to a speedy trial equivalent to the defendant's right.

040 REP. BRIAN: On HJR 34, lines 15 and 16, does the right to be reasonably protected from defendant or convicted criminal through out the criminal justice process mean during parole and probation period?

BELOOF: Correct, it is a general statement. The protection would be largely up to the Oregon Supreme Court to determine what they are and how to apply since it would be written broadly in the Constitution.

055 KOUNS: This is one more way to force the issue that the purpose of the system is to protect the citizens of the state. \*Urging a yes on HJR 34 without paragraph 1.

074 REP. SUNSERI: On HJR 34, page 1, line 12, what might it cost for the right to be informed of, present at, and heard at all criminal proceedings?

KOUNS: In theory the victims have these rights in the statutes but no remedy to enforce.

BELOOF: All victims are notified of proceedings by computer generated letter.

094 REPRESENTATIVE BILL MARKHAM, DISTRICT 46: (EXHIBIT B) Testifies on HJR 49. \*HJR 49 seeks to realistically restructure Article 1, Section 15 by changing the language to eliminate reformation and keeping only for protection of society.

126 CECIL EDWARDS, LEGISLATIVE HISTORIAN: (EXHIBIT C) In favor of HJR 49. \*Discusses interpretation of reformation. \*Comments on philosophical

predictions made by Justice Arno Denecke in a 1963 case Tuel v. Gladden. \*Reads directly from written testimony EXHIBIT C. \*With the repeal of the Oregon Habitual Criminal Act there has been a greater concern for the hardened criminal and less thought for the victims.

180 REP. JOHNSON: When and why was the change from "convicts" to "inmates"?

EDWARDS: "Inmates" came in after Governor Os West who created an honor system.

186 REP. SUNSERI: In the 1960s switched the emphasis from punishment to rehabilitation, it appears that HJR 49 is switching back.

MARKHAM: Close.

197 CHAIR MILLER: Would this be suggesting that efforts of reformation have not proved to be successful and protection has not been observed by the criminal justice system.

MARKHAM: Yes.

213 BARBARA STOEFFLER, OREGON MADD: Describes victimization seen. \*Victim Impact Panels. There are 7 to 8 panels. The purpose is to discuss with people what has happened to them.

290 REPRESENTATIVE KELLY CLARK, HOUSE DISTRICT 27: Testifies on HJR 54 and 34. (EXHIBIT D) \*Believes the criminal justice system is cruel and callous to victims. \*Sponsored HJR 54 and not HJR 34 because the language that ties Oregon state constitutional analysis to federal analysis is missing from HJR 54, which was deliberate. \*Section 15, Article 1 should retain the discussion about reformation and include language about protection of society. \*Discusses state vs. federal constitutional analysis. See written testimony (EXHIBIT D).

TAPE 84, SIDE B

057 REP. JOHNSON: Asks if by having a provision regarding the US Constitution in the provision would keep the US Supreme Court from "tossing the whole thing out"?

065 REP. CLARK: Don't believe so. Victim's rights do not diminish criminal's rights.

072 CHAIR MILLER: Is the Constitution a living document?

081 REP. CLARK: Believes so.

111 CHAIR MILLER: This is not something the legislature could do but the people could. Is there a concern about the what may be the majority view of the people of Oregon?

119 REP. CLARK: Not with regards to the crime victims' issues in here but with the linkage between the state and federal constitution. \*Afraid the question of linking state constitution to the federal constitution would be lost among the powerful discussions about victim's rights.

CHAIR MILLER: As observers of state wide ballot measure elections, that point is often raised. \*Expects an alarmist discussion would be generated about this issue and would not be true.

REP. CLARK: The most troubling aspect of HJR 34 is the linkage to the federal constitution. Supports everything else about except for that.

136 STEVE KANTER, DEAN OF LEWIS AND CLARK NORTHWESTERN SCHOOL OF LAW: Speaks for self rather than the law school. \*Comments on the package of resolutions before the committee. \*Discusses the Oregon Bill of Rights and the US Bill of Rights. \*Article 1, Section 15 is the subject of many of these resolutions. \*Urges rejection of attempts to amend Article 1, Section 15 and/or other provisions of the Bill of Rights. \*Bill of Rights are for all people not just for criminals. \*Article 1, Section 15 is an original Oregon Bill of Rights and discusses that no tremendous problems have resulted from it whereas elimination or modification of it will cause problems. \*Comments on 16 Willamette Law Review, an article about Article 1, Section 15, on pages 30 through 52 in 1979. \*Agrees with Rep. Clark regarding the linkage of state to federal constitution. Do not want to delegate interpretation of the Oregon Constitution to the 9 Justices in Washington DC. \*Article 1, Section 15 prohibits vindictive justice. Should not base anything done on vindictiveness. \*Proposed amendments will put in protection of society, and other utilitarian purpose for criminal laws. The Article was not intended to bar other utilitarian purposes. \*It does not preclude protection of society, deterrence, restitution. \*Ought to strive for rehabilitation.

262 CHAIR MILLER: HJR 55 preserves reformation and not being vindictive language and adds the protection of society. Is this objectionable to include that?

272 KANTER: It is not necessary. It would cause not harm if in there.

297 CHAIR MILLER: If the protection of society is implicit, why object to including it?

307 KANTER: Objection because it is unnecessary.

331 REP. MASON: Asks why there should be no vindictiveness when a victim has been raped, abused, humiliated and even killed. What is the rational?

353 KANTER: Human emotions of revenge are real. The question is whether it is proper for society as an institution to pretend it has emotions and to use those to carry out "barbaric and unspeakable behavior" which is inappropriate for policy.

373 REP. MASON: "Society becomes the nexus by which the organized individual impulses desires" are regulated.

KANTER: It is not necessary for an "institution" to be characterized as having feelings. Society adopted rules with consequences that achieve some aim. For society to act on the "way it feels is inconsistent with the notion of civilized society".

TAPE 85, SIDE B

011 REP. MASON: Should society's sanctions be sanctioned on a strictly utilitarian view with no moral content?

014 KANTER: "No place in society's rules for the basis of vindictiveness or revenge".

REP. MASON: Asks for the difference between "just desserts" and "vindictiveness" from perspective of victim.

019 KANTER: Vindictiveness is a motive of inflicting injury for the sake of it. Just desserts is a proportion punishment for a variety of other reasons.

029 REP. MASON: Is vindictiveness rejected because ....

KANTER: Because it is not appropriate for civilized society.

033 REP. MASON: Where will the fundamental base line values come from?

041 KANTER: From the people. From moral philosophy, religion, as to what morality should be.

051 CHAIR MILLER: Was the Bill of Rights adopted by a majority vote?

053 KANTER: The constitutional convention submitted it to the people for a vote and adopted by majority vote. \*Oregon ought to entrench the Bill of Rights to require a super majority to amend it.

066 REP. SUNSERI: Is Article 1, Section 15 original language to the Oregon Constitution?

KANTER: Yes. It has not been amended.

068 REP. SUNSERI: Why does punishment have to be related to the emotions of revenge or anger? Seems it is a primary responsibility of government. Seems experiment in rehabilitation has failed and need to get back to punishment to begin to clear up problems that have been growing.

077 KANTER: Agrees that punishment is not the same as vindictive justice. Punishment is recognized in Article 1, Section 15 currently. Discusses the rehabilitative idea.

097 REP. SUNSERI: The term punishment, in Article 1, Section 15, and reformation are contradictory.

KANTER: Disagrees. Often punish for the purpose of correcting behavior.

101 REP. SUNSERI: Comments on disciple to shape character.

104 REP. JOHNSON: Justice is not a situational thing it should be the same at all times.

120 KANTER: Responds that at particular moments of stress things that are favored for the short term are not good for the long term. \*Discusses Thomas Jefferson's philosophy.

152 REP. BRIAN: Why is the principle against vindictive justice implicit as well as protection of society?

159 KANTER: Because the Bill of Rights are typically limitations and prohibitions. Tells the government what it cannot do.

174 REP. BRIAN: According to HJR 34 and its proposed linkage to federal constitution, what would be the effect be if it were?

182 KANTER: It would require Oregon Courts interpret provision no more

broadly than the US Supreme Court. The Oregon Supreme Court would become, with respect to search and seizure and the other provisions discussed here, a court of appeals for the US Supreme Court.

222 REP. BRIAN: How does the Oregon Constitution differ from the federal Constitution?

KANTER: In the search and seizure area and other privacy rights areas. Bigger impact would be the Oregon Courts looking to the federal Constitution rather than the state constitution.

REP. BRIAN: Would like to know what other states are doing?

228 JOHN RANSON, ACLU: Discusses the economics on HJR 34. \*Victims rights will set up 2 sets of judicial systems that will go through the courts. There will be a set of rules, penalties, and evidence that will apply to crimes with victims and another set, presently in existence, that will apply to those committing crimes without victim. \*There will be costs and expenses because the court will have to separate all the variables to determine how to try the individual. \*The US Supreme Court will be the court of last resort for crimes committed with victims and the Oregon Supreme Court will be for those without victims.

273 CHAIR MILLER: Intent is to focus on HJR 55 now.

283 MILDRED CARMACK, CITIZEN: Previous testimony has stated feelings on these Resolutions. \*Expresses general concern is regarding abandonment of reformation in the criminal process. \*HJR 55 is better with regard to reformation.

330 SHAWN MCCREA, PRESIDENT OF OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION: Discusses HJR 55. Agrees with all testimony stated previously.

\*If abandon idea of reformation or add in protection of society with equal weight, believes it will cause the abandonment of the principle that people can change. Moving from focus on individual to the greater whole of society. The protection of society is unneeded. \*Expands to the extreme position on the protection of society comparing it to the Spanish Inquisitions, the Salem Witch Hunts, and the basis for the Nazis.

371 DAVID SCHUMAN, OCDLA: Came to speak only on HJR 54.

378 CHAIR MILLER: Closes hearing on HJR 55.

(Tape 85, Side B) HJR 55 - WORK SESSION

385 MOTION:REP. BAUM: Moves on line 5 "of reformation and" be removed and restore that same language on line 6 after "protection of society" by adding " of reformation and not of vindictive justice".

397 CHAIR MILLER: Rep. Baum moves to delete the reformation provision on line 5 and add on line 6 the reformation language.

REP. JOHNSON: Comments on grammar of the amendments.

417 CHAIR MILLER: Rep. Johnson suggests a friendly amendment to Rep. Baum's motion.

REP. JOHNSON: "Principles of protection of society and reformation, and not of vindictive justice."

TAPE 86, SIDE A

013 CHAIR MILLER: Hearing no objection to the amendment, so adopted.

MOTION:REP. PARKS: Moves HJR 55 as amended to the full committee with a do pass recommendation.

CHAIR MILLER: Rep. Parks moves HJR 55 as amended to the full committee.

VOTE: 7-0 Motion passes. AYE: Baum, Bauman, Brian, Johnson, Mason, Parks, Miller NO: 0 EXCUSED: Sunseri

CHAIR MILLER: HJR 55 as amended is passed to the full committee.

022 REP. MASON: What was the intent of the amendment?

024 REP. JOHNSON: Responding to Rep. Baum's amendment regarding how the language should read. Purely grammatical change.

031 CHAIR MILLER: Adjourns at 3:25 p.m.

Submitted by: Reviewed by:

Kathy Neely, Assistant David Harrell, Office Manager

EXHIBIT LOG:

A	-	Testimony on HJR 34 and 54 - Robert Kouns - 4 pages
B	-	Testimony on HJR 49 - Rep. Markham - 2 pages
C	-	Testimony on HJR 49 - Cecil Edwards - 4 pages
D	-	Testimony on HJR 34 and 54 - Rep. Clark - 5 pages
E	-	Testimony on HJR s 33, 34, 49, 54, and 55 - ACLU - 3 pages