

April 5, 1991Hearing Room 357 2:00 p.m.Tapes 81 - 83

MEMBERS PRESENT:Rep. Kelly Clark, Chair Rep. Judy Bauman Rep. Marie
Bell Rep. Jim Edmunson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

MEMBER EXCUSED: Rep. Tom Mason

STAFF PRESENT: Holly Robinson, Committee Counsel Kathy Neely,
Committee Assistant Holly Blanchard, Transcriber

MEASURES HB 3039 PH (Peyote) CONSIDERED: HB
2186 PH/WS (Emergency Suspensions) HB 2193 PH/WS (Patient Records)

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 81, SIDE A

003 CHAIR CLARK: Calls the meeting to order at 2:30 p.m

HB 2193 - PUBLIC HEARING

017 HOLLY ROBINSON (EXHIBIT A): Explains HB 2193. Refers to dash 2
proposed amendments dated March 26, 1991.

029 JEF VAN VALKENBURGH, DEPARTMENT OF JUSTICE: Discusses HB 2193-2
proposed amendments which were agreed to by advocacy groups concerning
mental health amendments but they have some disagreement with
corrections amendments.

HB 2193 - WORK SESSION

062 MOTION: REP. PARKS moves the dash 2 amendments.

There being no objection to the motion, the dash 2 amendments are
adopted.

067 MOTION: REP. PARKS moves HB 2193 as amended to the Full Committee
with a "do pass" recommendation.

070 VOTE: 5-0

AYE: Bauman, Edmunson, Parks, Sunseri, Clark NO: None EXCUSED: Bell,
Mannix, Mason

Motion passes, Rep. Parks to carry.

HB 3039 - PUBLIC HEARING

077 REP. JIM EDMUNSON, DISTRICT 39: Sponsor of HB 3039 and testifies

in its favor. This is a good public policy bill that will protect the integrity of religious practice without opening the floodgates of drug abuse in the State of Oregon. HB 3039 is an amendment to the Criminal Code and deals with controlled substances which adds a specific section dealing with peyote and would not decriminalize it, generally. This bill raises an affirmative defense which accommodates a long-standing religious practice and requires three elements of test for the affirmative defense. Discusses the three elements.

130 REP. BAUMAN: Are we going to leave no standards for the jury to define what is a bona fide religious practice?

138 REP. EDMUNSON: That's probably the most troublesome aspect of the bill. The courts of the United States have dealt with the question of what constitutes religious activity for decades.

151 REP. SUNSERI: Aren't there are some things that have been specifically denied by the Supreme Court in religious practice, such as, in Satanism, human sacrifice is denied.

154 CHAIR CLARK: That's true. Cites United States v. Reynolds, 1879, a polygamy case in Utah.

156 REP. EDMUNSON: Discusses other two provisions ("tests") concerning the use of peyote for a bona fide religious practice. HB 3039 basically addresses sacramental use.

- The bill would not apply to incarcerated persons in a correctional facility in Oregon.

- The bill does not have an age requirement.

- Idaho passed a law allowing the use of peyote to persons of Native American decent who are members of the Native American Church.

249 REP. PARKS: In light of the urine testing bill, would this be similar to marijuana and show up 30 days later in testing?

252 REP. EDMUNSON: Recalls in that bill, the mere presence of a controlled substance in a drug test would be misconduct as a matter of law. HB 3039 was not drafted with the drug testing bill in mind. Thinks the religious argument would still apply as a specific exception to a general law where the elements were met--but not 100 percent sure.

288 REP. SUNSERI: What about the bill that was passed concerning the manufacture, possession, or delivery of drugs in the presence of children being considered child neglect? Will that law have to be changed to allow this?

292 HOLLY ROBINSON: If the religious practice were occurring in the home and the drugs were delivered for religious purposes, the person would be charged, but the defendant would raise the affirmative defense.

303 REPRESENTATIVE KELLY CLARK, DISTRICT 27: Gives legal experience in handling religious cases. Thinks the Attorney General was correct as a matter of law in his position in the case before the U.S. Supreme Court and reads from summary of the peyote case.

019 REP. SUNSERI: Are there any Native American groups that do not use peyote in their ceremony?

REP. CLARK: Think so. The sticker is, bona fide practice. Nervous situation having the state involved in what is and is not a bona fide religious practice.

035 REP. BAUMAN: Nervous about the "or not" path. Refers to HB 3039, Page 2, line 15.

048 REP. CLARK: Might be preferable to remove the phrase "bona fide."

053 REP. EDMUNSON: Trying to minimize the wiggle room and wouldn't have a problem with that. There's ample precedent about when religion is being dealt with and when not.

059 REP. CLARK: Refers to line of U.S. Supreme Court cases dealing with conscientious objection. The lack of an age requirement is another difficult area in the bill. Thinks the bill is worth passing.

088 REP. BAUMAN: Interesting issue with regard to forfeiture laws. Would property assets of a church be subject to Oregon's civil forfeiture law even if the participating members had the affirmative defense of this bill?

093 REP. CLARK: That may be the case but it would be bold on the part of a law enforcement agency to go in that direction.

109 REP. EDMUNSON: Discusses reasons for introducing the bill that includes consideration of the Native American culture.

150 ALFRED LEO SMITH, NATIVE AMERICANS: Testifies in support of HB 3039. Gives personal background which included an education at Indian schools. Talks about alcohol problem and treatment process--sober for 34 years. Talks about the Native American Church and medicine man. Understood peyote to be a dangerous drug and medicine man explained it's a sacred medicine used for centuries by native people to communicate with the Creator--it's not a drug. Survived using the medicine--didn't have an alcohol relapse. My children know our Native American traditions. The Native American Church is recognized on an international level and I've been asked to speak at a World Council of Churches meeting. Want to be able to worship and pray as our ancestors have done.

367 REP. BAUMAN: The committee is honored by your testimony and presence on behalf of the bill.

372 REP. MANNIX: How would you feel if we were more cautious in the description of the religious practice and had it read, "of a Native American tribe"?

381 REP. CLARK: That was considered but it probably runs afoul with the Oregon and federal constitutions.

390 REP. MANNIX: How about "associated with a religious practice of a group of people with whom the United States has a treaty"?

394 REP. EDMUNSON: That's worth pursuing.

403 REP. SUNSERI: Describe what happens during the ceremony and the use of peyote and its affects.

TAPE 81, SIDE B

005 SMITH: The meeting is usually sponsored for a reason; members, families, doctoring, healing. Describes taking of the medicine (peyote) through tea, paste, or dust form and praying to the Creator for divine blessing. Never noticed a feeling of being drunk or "high" from peyote but on occasion have felt sick.

034 REP. SUNSERI: Can peyote be a violent drug if taken in sufficient quantities?

039 SMITH: Never seen anyone drug-crazed.

043 REP. EDMUNSON: Relied on others who've said it can make a person violently ill and nauseated.

057 REP. BAUMAN: Defers technical questions to the subcommittee.

084 ELLEN LOWE, ASSOCIATE DIRECTOR, ECUMENICAL MINISTRIES OF OREGON (EXHIBIT B): Testifies in favor of HB 3039. Reviewed the Indian Religious Freedom Act and the First Amendment and felt secure that the Native American Church would be able to practice their ritual just as our 17 denominations utilize wine in their sacraments. On a national level, there was concern about this in reference to religious freedom. We've always resisted any attempt to define a church. Concerned with language in HB 3039, Page 2, line 15, "the bona fide practice of a religious belief" and suggests the words "bona fide" be removed from the proposed amendment.

174 DAVID FIDANQUE, ASSOCIATE DIRECTOR, ACLU OF OREGON: Testifies in support of HB 3039. Discusses four separate "Friend of the Court" briefs filed by the ACLU in the case of Al Smith and Gaylen Black. Talks about how radical the final U.S. Supreme Court decision was which turned its back on 50 years of U.S. Supreme Court case law. The decision has the affect of making religious practices subject to majority vote. Refers to Article I, Sections 2 and 3, that protect the free exercise of religion in the State of Oregon. Notes the Oregon Supreme Court decision did not address whether or not the religious practice of peyote was protected as a matter of criminal law by the state constitution.

249 CHAIR CLARK: Why didn't the Oregon Courts, under a state constitutional analysis, protect this practice?

267 FIDANQUE: Don't have a good answer. They were dealing with an unemployment compensation issue and felt it wasn't appropriate to determine whether it was a violation of a criminal statute. This bill would protect the intent of the Oregon Bill of Rights.

323 REP. CLARK: What about the forfeiture statutes?

308 FIDANQUE: Understands that it refers back to this statute (provisions of Chapter 475).

321 CHAIR CLARK: Concerned that the use of peyote could be subject to the forfeiture statutes because it's part of the prohibited conduct.

325 FIDANQUE: Defers that to a criminal attorney.

330 REP. EDMUNSON: Discusses understanding of forfeiture law. In this bill, conduct in this religious context is not prohibited and protected, the instruments of it are not subject to forfeiture.

355 JEROME LIDZ, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE (EXHIBIT C): Takes no position on the merits of HB 3039. Wants to assist in making sure the bill achieves its purpose and could be easily defended against constitutional challenge. Our department still has some concerns about the constitutionality of HB 3039 but we think it can be defended. Notes the affirmative defense is not limited to one religion only which would be unconstitutional under Oregon's constitution.

TAPE 82, SIDE B

002 REP. EDMUNSON: Refers to suggested language about churches that have a treaty. Would that work?

005 LIDZ: Not prepared to comment on a bill that would define a group of people authorized to assert the affirmative defense not on the basis of religion but rather on Native American sovereignty.

013 CHAIR CLARK: Don't intend to move the bill today which would give you time to investigate that.

015 REP. MANNIX: We're not making something a crime--we're creating an exception to a crime. What about adding a provision that if this is found unconstitutional, it's back to square one and the rest of the law is on the books.

020 LIDZ: That's a key question about the intent of the legislature.

038 REP. MANNIX: Suggest a paragraph in HB 3039 stating the legislature's intent.

044 CHAIR CLARK: Refers to mid-1960 conscientious objection cases.

052 LIDZ: This bill is defensible because it's cast as an affirmative defense rather than as an outright exemption. It limits the need for a district attorney to initiate an inquiry into religious questions. This bill is also worded to minimize the need to debate church doctrine.

077 REP. BELL: Anything in the bill that precludes a group from forming a religion for the purpose of using peyote?

080 LIDZ: There's nothing that does that in the bill but the reference to "bona fide religion" might make a judge or jury question a group formed for the purpose of taking peyote qualifying as a religion. Difficult question.

094 REP. BELL: Offers more generic language referring to a religious group.

095 LIDZ: Heard that argument made to the U.S. Supreme Court for a constitutional claim. Thought it was constitutional "thin ice" because it starts to prefer one religion over the other which the Oregon constitution prohibits. There's no constitutional preference for an old religion or traditional religion as opposed to new ones.

108 REP. BELL: Then there's no constitutional way to limit this to the Native American Church because of their tradition?

110 LIDZ: That's correct, as a matter of religion.

127 REP. MANNIX: Raises the issue of sovereignty for a group and not focusing on the individual's genetic connection with that group. Concerned about not recognizing an ancient tradition.

147 LIDZ: Understands the Native American Church is less than 100 years old. The practice of taking peyote for medicinal or religious purposes is an old practice from Latin America. Committee might want to clarify this is a peyote, only, exemption and is based, in part, on the characteristics of peyote that makes it different and less of a social problem than other drugs.

203 REP. BAUMAN: Parallel seems more with alcohol and its use in the sacraments with Christian churches; and minors who take it during those sacraments. Talks about alcohol's impact on Native Americans.

228 CHAIR CLARK: Ever been a challenge to the Oregon exception for sacramental alcohol?

232 LIDZ: Don't believe so.

233 CHAIR CLARK: Any weakness in the current bill that would not also be a weakness of the existing statutory exception for sacramental alcohol? In both cases the state is making a statement about a religious practice--one being, an affirmative defense to a controlled substance statute.

239 LIDZ: That's the precise difference. From a church state perspective, they are similar. Prosecution of peyote in Oregon hasn't been a big thing even with the law on the books.

263 REP. MANNIX: The social import here isn't the number of cases involved but the recognition by the Oregon Legislature that Native Americans deserve the same consideration for their religious practices as mainstream churches in our society. Refers to a limit on the practice of polygamy by states and the U.S. Supreme Court because of greater social purposes. Couldn't we do just the opposite in this instance?

300 LIDZ: You can try. Our job is to defend the statute. Think it's a riskier bet than this bill. The analogy between alcohol and peyote breaks down in legal terms because peyote is a Schedule 1 controlled substance and alcohol is not.

340 REP. MANNIX: Part of the analysis is the social problem.

347 REP. SUNSERI: Refers to HB 3039, Page 2, line 6. If peyote became legalized, how could it be denied to incarcerated Native Americans?

362 LIDZ: Corrections officials may and do restrict people's access to religious practice when necessary because of legitimate reasons. The introduction of any controlled substance into a prison system is extremely dangerous.

379 REP. SUNSERI: Supreme Court limitations of religious practice take

place when it infringes on the rights of another individual. Doesn't seem others are affected in an adversary way by the use of peyote at ceremonies. Think we're going in the right direction with HB 3039.

TAPE 83, SIDE A

004 LIDZ: Not sure the Supreme Court would accept that as doctrine. Recalls few reports of peyote causing problems for others at ceremonies.

010 REP. EDMUNSON: HB 3039 will have a work session in about two weeks.

021 LEE ANN EASTON, STAFF ATTORNEY, NATIVE AMERICAN PROGRAM OF OREGON LEGAL SERVICES: Testifies in favor of HB 3039. My program represented Messers. Black and Smith in their cases before the U.S. Supreme Court and the Oregon Supreme Court.

024 JACK LAWSON, ALCOHOL AND DRUG THERAPIST: (Member of the Native American

Church.) Discusses the Freedom of Religion Act (1978). Doesn't think HB 303 9 is strong enough.

049 REP. MANNIX: In terms of a preamble which recognizes the legitimacy and significance of the Native American Church and its practices.

053 LAWSON: Two things are happening--a written law and an unwritten law. The unwritten law says we don't give churches and religious organizations favoritism, one over the other. The exemption is warranted and valid. Indian Health Service, a federal agency, recognizes the Native American Church as a means of treatment for alcoholism.

078 REP. BAUMAN: Discusses contrast with alcohol in the bill and paralleling the two.

093 LAWSON: Notes exceptions to the rule. If this were dominant in society religions today, we wouldn't be dealing with it now.

097 REP. EDMUNSON: Does peyote come from a federal reservation in the Southwest under the jurisdiction of the Drug Enforcement Agency?

110 EASTON: Under the Drug Enforcement Agency rules, there's an exemption for the Native American Church and the use of peyote as a matter of federal law. Many western states (25) have an exemption from their criminal laws for the use of peyote. The use of peyote by the Native American Church is just as important as the use of alcohol by the Catholic Church.

131 REP. BELL: At what age do children begin using peyote in your religious ceremonies?

142 LAWSON: In some places, the mother will use it just before birth so when the child is born, he's born into the Church.

152 REP. BELL: How about after birth?

153 LAWSON: It's an all-night ceremony so the babies usually will sleep. Maybe just a bit in the tea and then onto the baby's lips.

157 REP. BELL: How frequently would the children be involved in these

ceremonies--once a week, month, year?

158 EASTON: There is no regular schedule like going to mass.

162 LAWSON: It depends on the purpose of the meeting, as needed.

168 REP. BELL: Does the pregnant mother ingest peyote during her pregnancy other than at birth?

170 LAWSON: Cannot answer that. Peyote is a medicine for our culture.

177 REP. BELL: Discusses recommended dosages for medications. Nervous there are no boundaries for peyote.

180 LAWSON: Not aware of any deformities by peyote on pregnant women.

184 REP. EDMUNSON: Dealing with what is a controlled substance.

193 REP. BELL: Do you have to be a member of your Church for any amount of time to partake in the ceremony?

203 LAWSON: People can come into the ceremony. It's not just the peyote but the whole set of values and beliefs.

206 EASTON: In the Smith case and Black case, there's evidence peyote is a non-addictive hallucinogenic drug with no anecdotal or physical evidence of "tripping out" or abuse.

226 REP. EDMUNSON: Comments on video tape of a ceremony. Will make the tape available for review by committee members. Closes the hearing on HB 3039.

HB 2186 - PUBLIC HEARING

256 HOLLY ROBINSON, COMMITTEE COUNSEL: Discusses HB 2186 that was requested by the Department of Higher Education.

268 MELINDA GRIER, DIRECTOR OF LEGAL SERVICES, DEPT. OF HIGHER EDUCATION (E): Testifies in support of HB 2186 which would allow us to limit access to the campus after finding an employee or student poses an immediate danger to public health and safety. It would require us to adopt procedures to hold a hearing immediately thereafter.

293 JASON COLEMAN, OREGON STATE LOBBY AND ASSOCIATED STUDENTS OF WESTERN OREGON STATE COLLEGE (EXHIBIT F): Testifies in support of HB 2186.

Discusses a personal incident that involved some dangerous individuals which could have resulted in his death.

318 REP. MANNIX: Discusses the proposed amendment to EXHIBIT E; the time element for a post-suspension hearing needs to be clarified. Suggests language change that a post-suspension hearing be held within 48 hours of the suspension.

324 ROBINSON: Should be 48 after the request--not 48 hours after the suspension.

344 GRIER: Don't have a problem with that; it's really a matter for the student lobby.

348 COLEMAN: Not opposed to the changes in wording but both forms of wording are good.

359 REP. MANNIX: Could use the 48 hours as a temporary review to see if the suspension should stay in place pending a final hearing. Would 48 hours give you enough time to assemble your board?

365 COLEMAN: Forty-eight hours might not be enough time.

372 REP. EDMUNSON: Would 72 hours give you enough time?

374 COLEMAN: That would clear up any problems with a weekend situation.

376 REP. SUNSERI: Would a racial or sexual orientation slur with some kind of threat be included in this?

382 GRIER: My sense is that it would have to pose an immediate danger. The example give doesn't suggest an immediate danger concerning someone's safety.

HB 2186 - WORK SESSION

425 MOTION: REP. MANNIX moves to amend HB 2186 as follows: Line 9, delete "as soon as possible but", line 10, add the sentence, "If the suspended individual so requests, a post-suspension hearing shall be held within 72 hours of the request for a hearing."

There being no objection to the amendment, it is so ordered.

435 MOTION: REP. MANNIX moves HB 2186 as amended to the Full Committee with a "do pass" recommendation.

VOTE: 6-0

AYE: Bauman, Bell, Mannix, Parks, Sunseri, Edmunson NO: None EXCUSED: Mason, Clark

The motion carries, Rep. Mannix to carry.

450 REP. EDMUNSON: Adjourns the meeting at 4:50 p.m.

Submitted by, Reviewed by,

Holly Blanchard
Manager

David Harrell Transcriber

Office

EXHIBIT LOG:

A - Proposed Amendments, HB 2193-2, dated 3/26/91, Committee Staff, 3 pages
B - Written testimony, HB 3039, Ellen Lowe, Ecumenical Ministries of Oregon, 16 pages
C - Written testimony, HB 3039, Jerome Lidz, Dept. of Justice, 3 pages
D - Written testimony, only, HB 3039, Major Dean Renfrow, Oregon State Police, 2 pages
E - Written testimony (with proposed amendments), HB 2186, Melinda Grier, Dept. of Higher Education, 2 pages
F - Written testimony, Jason Coleman, Oregon Student Lobby, 2 pages
G - Written testimony, only, HB 2186, Lynn Pinckney, Oregon Student Lobby, 1 page