

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.

INFORMATIONAL

HOUSE COMMITTEE ON JUDICIARY

January 24, 1991Hearing Room 357 1:30 p.m.Tapes 8 - 10

MEMBERS PRESENT:Rep. Randy Miller, Chair Rep. Tom Mason, Vice Chair Rep. Ray Baum Rep. Judith Bauman Rep. Marie Bell Rep. Tom Brian Rep. Kelly Clark Rep. Jim Edmunson Rep. Rod Johnson Rep. Kevin Mannix Rep. Del Parks Rep. Ron Sunseri

STAFF PRESENT: Greg Chaimov, Committee Counsel Holly Robinson, Committee Counsel Kathy Neely, Committee Assistant

WITNESSES: Oregon State Bar

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TAPE 8, SIDE A

004 REPRESENTATIVE MILLER, CHAIR: Calls the meeting to order at 1:33 p.m.

014 BOB FRASER, PRESIDENT OF THE OREGON STATE BAR: Discusses the intent of OSB presentation. Introduces other OSB members and representatives with him. Makes general comments regarding the OSB . Comments on discipline procedures and open records process that are unique to Oregon. Describes different types of state bars.

144 CHAIR MILLER: Questions the legislative experience.

147 BOB FRASER: Comments on the California State Bar and compares it to the Oregon State Bar with regard to fees. Refers to organizational chart of the OSB . Describes each component and its relation to the OSB and refers to other types of state bars. Describes relationship between Oregon Supreme Court and the OSB Board of Governors. Comments on OSB 's ability to self regulate and gives example of other states. Discusses Legislative Counsel history and how the OSB has helped. Praises the Chief Justice of Oregon Supreme Court. Explains the OSB Board of Governors and the organizational structure under the Board of Governors. Discusses in length the disciplinary procedures. States examples.

TAPE 9, SIDE A

069 REP. MASON: Questions if the person is an advocate.

BOB FRASER: Yes they are and explains why.

082 REP. MASON: Why must it be adversarial relationship?.

087 BOB FRASER: Discusses checks and balances in response to Rep. Mason's questions.

096 SELENE GREEN, EXECUTIVE SECRETARY TO THE OREGON STATE BAR: Explains the system regarding above comments. 211 disciplinary actions were dismissed and 80 were prosecuted.

105 CHAIR MILLER: Asks to review those numbers once again. The number of complaints filed.

106 MS. GREEN: There were 1,074 complaints filed. Out of that about 250 to 300 went as far as the SPRB. In 1989, 211 were dismissed.

117 CHAIR MILLER: The public could say the reason so many are dismissed is because lawyers are disciplining themselves.

123 BOB FRASER: Responds with an example. People who lose a case will look for various ways to vent their outrage. A lot of complaints are generated out of lawyers losing cases.

150 MS. GREEN: Adds further comments on her previous response regarding ethical complaints. They are not actually ethical complaints, some are controversies over fees or malpractice disputes which are included in the numbers previously stated but are referred out to other people.

159 REP. BRIAN: Of the 80 prosecuted, about 30 or 31 had sanctions. What about the other 50?

MS. GREEN: Could be an admonishment.

170 BOB FRASER: Defines the various violations and sanctions.

REP. BRIAN: The 50 received more of a sanction than admonishment or on up to disbarment.

180 REP. MASON: Comments on a previous presentation regarding ethics and states a hypothetical example used in presentation. What is ethical may not be ethics. Ethics refers to the "Cannons of Ethics".

213 BOB FRASER: Remarks on Rep. Mason's comments. Ethics are concerned with rules of conduct not what a lay person deems as ethical.

240 CHAIR MILLER: How many complaints are filed by other lawyers?

BOB FRASER: Can get the figures, but don't have them right now.

CHAIR MILLER: When do these proceedings become public?

BOB FRASER: From the beginning. The file is open all the time. Comments on proposed statute of limitation on complaints being in the file.

273 REP. MASON: The public does not have the right to know when someone slanders a lawyer or if there is an unfounded complaint against the attorney. Why should it stay on the record forever? Questions this

policy.

288 BOB FRASER: Letters stating the complaint was unfounded or dismissed are put in the file.

REP. MASON: The injustice continues because people use the fact there was a complaint filed against the attorney.

310 BOB FRASER: It is because of the public records law.

319 REP. CLARK: Comments on pro bono legal work done by OSB . What efforts is the Bar taking to encourage attorneys to do pro bono?

334 BOB FRASER: Have pro bono standards.

REP. CLARK: It is not a requirement though?

BOB FRASER: Correct. Reads the aspirations for pro bono work. Discusses Lane County's efforts in pro bono.

383 REP. CLARK:: Can a survey be included as part of the annual paperwork the Bar puts out? Encourages the use of the annual mailing. Does not support mandatory pro bono. Proposes to increase the ethics CLE requirement and a portion of that requirement can be met with pro bono work.

427 BOB FRASER: Gives personal reaction to that idea.

TAPE 8, SIDE B

024 MS. GREEN: Comments on pro bono committee.

032 REP. MANNIX: Discusses pro bono request to the MCLE board that lawyers serving in the legislature be given credit for that time served.

REP. CLARK: Has written the MCLE board or the Chief Justice regarding that.

REP. MANNIX: Has statistics on the number of hours spent in hearings last session and the various topics discussed.

042 REP. BELL: Leaving charges in file is a serious problem. It causes a problem with running for public office. Proposes stamping the original complaint noting it was frivolously brought or dismissed.

BOB FRASER: Without legislative direction, OSB does not have the right or ability to do that.

067 REP. BELL: Discusses suggestion.

072 CHAIR MILLER: Comments on Rep. Bell's suggestion.

079 MS. GREEN, EXECUTIVE DIRECTOR OF OSB : Comments on OSB 's roll to lawyers,

judges, and to public. Discusses programs in the Public Affairs Division.

212 REP. CLARK: Where do grants from the OSB come from?

219 MS. GREEN: The sponsorship is out of the Public Affairs budget.

229 REP. CLARK: Is the bar doing that in a larger sense?

MS. GREEN: No. It is a very small scale.

240 REP. CLARK: What is the cost of advertising?

MS. GREEN: The money spent is very small, most time, etc. is donated.

254 CHAIR MILLER: Comments on the services the Bar provides. How are the dues spent?

273 MS. GREEN: 80% goes for combination for regulatory programs, including discipline, professional competence programs, and the membership services programs. 35% is discipline.

CHAIR MILLER: Comments on California.

MS. GREEN: Responses on the organization of the disciplinary program. California is in-house. The primary component of OSB 's program is volunteer driven.

306 REP. BELL: Comments on public service done by OSB .

319 JIM SPICKERMAN, VICE PRESIDENT OF THE OSB AND CHAIR OF PUBLIC AFFAIRS: Comments on his function in the Bar. Discusses the U.S. Supreme Court case Keller that developed guidelines regarding lobbying efforts and use of Bar dues. OSB Sections can use their dues to take positions on ideas because their dues are voluntary. The U.S.S.C.'s guidelines were adopted.

393 REP. CLARK: Comments on a situation in 1989 session regarding a Bar Section being involved of controversial legislation.

414 JIM SPICKERMAN: Agrees that there is no clear line in this regard. Further discusses the Keller case and decision of the case.

TAPE 9, SIDE B

012 JIM SPICKERMAN: Continues comments on Keller case. Nothing can be done on an individual member's representation about anything before the legislature but must make it clear it is the individual's representation.

022 REP. CLARK: Comments on points.

027 JIM SPICKERMAN: Discusses the position of Keller and the Court's suggestion to have a hearings mechanism on a disagreement.

041 CHAIR MILLER: Discusses affirmative action programs. What would be the disposition of the Bar would be if someone challenged participation in that program? Has it been challenged?

054 JIM SPICKERMAN: No challenges thus far. There is a procedure in place so it can be.

057 BOB FRASER: Affirmative action was passed and put in by the members. Two years ago OSB members voted to increase that allocation.

069 CHAIR MILLER: Provides a correlation between Keller and union dues.

069 BOB FRASER: Speaks about OSB resolutions regarding Rep. Millers' example. Further discusses affirmative action and the Constitutional aspects. This is presently under review.

096 CHAIR MILLER: Could the Constitutional struggle be avoided by causing this program and others to be listed among those members could participate in on a voluntary basis?

100 BOB FRASER: OSB is considering such an idea.

114 CHAIR MILLER: Comments on previous discussion on Keller.

119 BOB FRASER: Will be leaving a guide to the OSB for future reference. Thanks the committee for the time.

158 JIM SPICKERMAN: Comments on public affairs and offers to help the committee in any way possible.

BOB FRASER: Invites the committee to a reception this evening.

174 JOHN BARLOW, CHAIRMAN OF BOARD OF BOARD OF BAR EXAMINERS: Discusses the Board of Bar Examiners. States the organizational structure, the purpose, and the examination given to would-be-attorneys.

256 CHAIR MILLER: Questions the bar exam. Is the exam similar to the practice of law? Are professors able to determine if their students have the required learning to practice law? Does passing the exam mean one is competent to practice law?

JOHN BARLOW: Discusses the challenge for attorneys. The exam is similar because the fact pattern presented is like having a client come in. Wants to make sure the applicant has the requisite learning and ability to recognize where the legal issues are. Professors certainly have the ability to judge if the student has the competence to become a lawyer. Law schools do not perform that function however. Law schools should not be prep for law exams. This exam is the best test available to judge competence. The applicant should be required to go to law school before taking the exam to learn the required information to pass the exam. The Board of Bar Examiners makes sure that the applicant can identify the legal issues. Discusses the way the exam is graded.

390 REP. CLARK: You said that Judge Lindy used to urge the law schools not to become too closely tied to what is on the bar review.

JOHN BARLOW: The Justice's concern was that there not be a "feedback" effect from the bar review course to the law school. That education should be much more than prep.

TAPE 10, SIDE A

007 REP. CLARK: If the exam is designed to measure minimum competence, there is a problem in that correlation. Either the exam is flawed or we have to give up on law schools training people to practice law. Almost have to take the bar review course to pass the exam.

JOHN BARLOW: Most who take the exam have taken the course. The members of the Board of Bar Examiners are appointed by the Supreme Court to

prepare the test. The Board also reviews the multi state portion. Questions are submitted to professors of the three state law schools and a model answer before the examination is scored.

REP. CLARK: Comments on a study done during the interim. Understands there is going to be a move to weigh the essay portion more heavily than the multiple choice portion.

JOHN BARLOW: It was discussed, submitted, and referred to the Board of Bar Examiners. It did not make sense to do it. Everyone who passes the exam does a passing job on both portions. The recommendation was to leave it as is. There are 55 jurisdictions within the 11 federal judicial circuits that administer some type of bar exam. Five of those do not use the multi-state, such as Washington.

055 REP. BELL: Questions the figures. 500 out of 700 are passing each year seems really bad. Don't understand why was this accepted. Why are they failing, is it law school teaching, the test, or an effort to limit the number of attorneys?

JOHN BARLOW: It is not an effort to limit the number of attorneys. The bar exam is necessary because not all people who graduate show the required learning. There are those who can just never pass.

REP. BELL: Concerned about the failure rate when trying to defend the state's only public law school.

JOHN BARLOW: They are separate issues. Law school deans are resistant to having the schools give the bar exam. There has to be some way for one to demonstrate that requisite learning.

123 CHAIR MILLER: Will have the opportunity to ask more questions at a later hearing.

127 REP. EDMUNSON: Wants the witnesses to consider that the bar exam tests more than legal knowledge. Does it test for temperament and ability to function under pressure?

151 CHAIR MILLER: Thanks the witnesses. Adjourns the meeting at 3:35 p.m.

Submitted by:      Reviewed by:

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