

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.

Measures Heard SB 372 (PUB) SB 379 (PUB) SB 402 (PUB) SB 426 (PUB) SB 434 (PUB)

SENATE COMMITTEE ON THE JUDICIARY

January 30, 1991Hearing Room C 1:10 p.m.Tapes 13 - 15

MEMBERS PRESENT:SEN. JOYCE COHEN, CHAIR SEN. JIM HILL, VICE CHAIR  
SEN. JIM BUNN SEN. JEANNETTE HAMBY SEN. BOB SHOEMAKER SEN. DICK SPRINGER

MEMBER EXCUSED: SEN. PETER BROCKMAN

STAFF PRESENT: BILL TAYLOR, COMMITTEE COUNSEL MARK THORBURN,  
COMMITTEE ASSISTANT

WITNESSES: JEFF WOLFSTONE, BUSINESS LAW SECTION,  
OREGON STATE BAR

ROSS LAYBOURN, DEPARTMENT OF JUSTICE

RONALD MARCEAU, COUNCIL ON COURT PROCEDURES

FRED MERRILL, COUNCIL ON COURT PROCEDURES

JEFFREY FOOTE, OREGON TRIAL LAWYERS ASSOCIATION

CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION

VALERIE SALISB URY, LEAGUE OF OREGON CITIES

DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION

THOMAS HOWE, ATTORNEY AT LAW

SANDRA THOMAS, CITIZEN

THOMAS JACKSON, CITIZEN

TOM CROSS, CITIZEN

ARVA FORD, CITIZEN

JOHN GERVAIS, OREGON NEWSPAPER PUBLISHERS ASSOCIATION

IVAN ZACKHEIM, ATTORNEY AT LAW

KARL KRUGER, MOTOR VEHICLES DIVISION

WILLIAM BIRHANZL, CITIZEN

STEVE GIARDINI, ATTORNEY AT LAW

DONALD REID, ATTORNEY AT LAW

WILLIAM BERKSHIRE, ATTORNEY AT LAW

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TAPE 13, SIDE A

004 CHAIR COHEN: Calls meeting to order at 1:10 p.m. Sen. Brockman is excused; he just became a grandfather.

SB 379

016 BILL TAYLOR, COMMITTEE COUNSEL: Bill introduced at request of attorney Michael Mills who cannot be here today.

029 RONALD MARCEAU, COUNCIL ON COURT PROCEDURES: Refers to documents submitted to committee (Exhibits A, B, and C).

- Council declined to take action on bill; regards it as a nonproblem. Recent Court of Appeals case says that paralegal time is variety of attorney fees. Concerned that, if you specifically add law clerks and legal assistants; there may be confusion that whether that is the only kind on nonlawyer services that would be recoverable. Form for attorney fees required by Uniform Trial Court Rules has column for "others."

075 CHAIR COHEN: There are certain judges who do not count those kind of expenses. How do you deal with that?

082 MARCEAU: We don't know who they are. It should not happen, particularly since the 198 9 Yamaha case.

088 FRED MERRILL, COUNCIL ON COURT PROCEDURES: UTCR 5.080 requires attorneys to use form attached to testimony (Exhibit C) which requires listing number of hours and services for each attorney, clerk, and legal assistant and other items.

094 CHAIR COHEN: Then it is incumbent upon the Bar to educate it's members.

SB 402

116 JEFF WOLFSTONE, BUSINESS LAW SECTION, OREGON STATE BAR: Bill deletes cross references made in the course of codifying the Oregon Control Share Act that was adopted in 1989. (Exhibit D)

SB 426

129 WOLFSTONE: Bill aimed at making technical corrections in the Oregon Nonprofit Corporation Act. (Exhibit E)

- Section one changes the definition of what is a member of a nonprofit corporation. Intent was to accord member status to people who would have the right to otherwise vote on major corporate events.

- Problem is that it does not accord to experience out in the world and people were having trouble figuring out whether they had to give voting rights in various situations.

- Another problem was that one had the right by statute to vote on certain things and, therefore, people were concluding they had the right to vote on directors and therefore had a right to vote that is more general than was intended.

187 SEN. BUNN: Are all members entitled to vote for directors?

190 WOLFSTONE: Have tried to use term "member" in technical sense. If you are a member, then you have the right to vote on more than one occasion for the election of directors. Nonprofits might use term colloquially, but if they don't have that right to vote for a director on more than one occasion, then they are not, for corporate law purposes, a member.

- Section two is a correction of cross reference errors that occurred in codifying the initial act.

- Section three deals with voting entitlement of members. Makes it clear that, regardless of source of the right to vote, every member gets one vote on every matter that members are entitled to vote on. Also clarifies that voting rights may be varied as between classes or excluded members from voting on any issue on which they'd otherwise be entitled to vote. Third, it says that if you have not retained the right to vote in the election of a director or directors, then you are not a member.

- Section four deals with what it takes to be present for the purpose of creating a quorum of directors. Question was that if you abstained from voting, are you potentially not present. Wants to make it clear that you're present for purposes of a quorum.

246 SEN. SHOEMAKER: Is this change necessary?

250 WOLFSTONE: Not necessary from standpoint of effecting a change in the law, but to provide a roadmap for those people who do not use a lawyer.

- Section five encompasses Senator Shoemaker's amendment.

262 CHAIR COHEN: We can skip on to section six.

263 WOLFSTONE: Section six deals with loans to or guarantees for directors. Act originally provided that public benefit and religious corporations could not make loans, guarantee obligations, or make modifications of those benefits for a director or officer. Felt to be unduly restrictive. Such groups need to offer certain financial supports to attract qualified personnel. Bill provides exception to prohibition for recruitment purposes and notice to the Attorney General.

- Section seven deals with selection of officers. Current rule is that corporation is to have officers elected or appointed by the board. Suggestion is to allow articles or bylaws could authorize others to elect or appoint officers. Nonprofits often have various officers elected or appointed by some third party who is not on the board.

- Section eight deals with resignation and removal of officers. Point is that if an officer can be appointed by a third party, then also want . . . .

327 CHAIR COHEN: That's really conforming to section seven in terms of release.

328 WOLFSTONE: Yes.

329 SEN. SHOEMAKER: Is the word "person" defined somewhere in the nonprofit

corporation act?

331 WOLFSTONE: Can look; not sure.

332 SEN. SHOEMAKER: Does it include entities, such as another corporation?

333 WOLFSTONE: The intended answer is yes.

336 SEN. SHOEMAKER: Does it include more than one person?

338 WOLFSTONE: Yes.

339 SEN. SHOEMAKER: You do not want to limit that by the use of the singular here instead of the plural.

341 CHAIR COHEN: You'll check that with staff and get back to us.

342 WOLFSTONE: We'll check into it.

- Section nine is a signal that if you go through the indemnification process, there is a report that has to be made under another section.

- Section ten deals with amendment of articles by directors. Not a change in the law, but recognition that the articles or bylaws might require a greater vote than a simple majority vote of the directors.

- Section eleven deals with administrative revocation in response to request from Secretary of State's office which was cleared with the Department of Justice; the Department of Justice did not want to get notice of the administrative revocations.

- Section twelve deals with reports to members of indemnification. Third parties who have right to elect or appoint directors should get the same notice as the members.

381 CHAIR COHEN: This is just one more step as to the board of directors in terms of appointing and notice of indemnity.

385 SEN. SPRINGER: On section six, does the Attorney General authority elsewhere in the law to raise an objection? What's intended once the Attorney General starts getting these things?

397 WOLFSTONE: If the Attorney General concludes that this action is inconsistent with the public benefit or religious nature of the corporation and it would be ultra vires transaction, then they can take actions to prevent the transaction. The Attorney General felt fairly strongly about limiting the ability of loans and guarantees.

426 SEN. SPRINGER: Do we have anyone from the Attorney General's office?

435 ROSS LAYBOURN, DEPARTMENT OF JUSTICE: His recollection was that, before

1989 Act, also had the same blanket prohibition on loans. We agreed with the members of the Bar who identified a specific need with respect to the recruitment of key officers and directors. We suggested two things:

- Make sure there were some limitations on that and they put in provisions making it relevant to recruitment only and a three year duration.
- Have the notice provision.

TAPE 14, SIDE A

021 CHAIR COHEN: Asked whether we have gone too far in asking nonprofits to lend to officers of the corporation

025 SEN. SPRINGER: Agrees with policy, but not sure how the Department of Justice would exercise discretion. Is there a difference between the Easter Seal Society who recruits someone who needs help to come here and the Rajneesh deciding they need to build something for a million for some officers or directors? What's your latitude or discretion? What's going to guide you folks?

037 LAYBOURN: We'd be guided by two things:

- If provision adopted, the first question we'd ask are whether the terms are within the perimeters outlined?
- Next, is any of the compensation viewed as unreasonable or, in terms of the tax law, constitute private inurement?
- Nebulous standard; we're in position of objecting only to the gross case.

049 WOLFSTONE: In some cases, a loan is a very good tool that doesn't tap what may be limited case resources to bring good people in. It is a difficult line-drawing test, but it is a desirable limitation with reasonable restraints on it.

SB 372

073 CHARLES WILLIAMSON, OREGON TRIAL LAWYERS ASSOCIATION: Introduces Jeffrey Foote.

075 JEFFREY FOOTE, OREGON TRIAL LAWYERS ASSOCIATION: The purpose of the bill is, in situations where there is a victim to a crime and the victim or the victim's family has an attorney, to provide the victim the customary discovery information from the District Attorney's office at

the same time as the defendant's attorney.

- Arises only in a few scenarios; generally in an automobile accident case where there is a charge of drunk driving or negligent homicide.

- This information is, which is made available to the defendant, is not made available to the victim or their family until, sometime several months after the accident and sometimes not at all, and it seriously impedes the investigation as to whether there is a basis for a claim and sometimes can effect the outcome of a case. Gives examples.

- If the District Attorney feels that there needs to be some protection on this information, the bill does provide that the DA can impose conditions that are reasonable to prevent the unnecessary release of the information.

112 SEN. SHOEMAKER: Is the drunk driving situation the only time when the need for this information arises?

114 FOOTE: Probably not. Any type of case where there is a criminal prosecution where there is a civil claim that may or may not be brought.

123 SEN. SHOEMAKER: Why is bill limited to drunk driving?

124 FOOTE: Don't know that it does that.

125 SEN. SHOEMAKER: Is it broader than that?

126 FOOTE: The caption seems to limit it there, but the bill itself does not.

129 WILLIAMSON: When the bill was originally introduced in the interim committee, it was limited to driving cases. The interim committee asked why it doesn't apply to all cases and we said really no reason, and so they probably just forgot to change the measure summary.

135 FOOTE: And we have no objection to reasonable charge for copying of this information.

138 SEN. SHOEMAKER: Making material available to the victim; don't know if that implies that it would have to be copied at the cost of the DA's office. Thinks it's implicit in that you can ask the victim to pay for that. 144 FOOTE: That's what happens now when you ask for a motor vehicle accident report.

146 CHAIR COHEN: The committee will ultimately have to decide whether we want to go so broad and wrap in all the defense lawyers at this point who probably haven't read the bill if they looked at the relating clause. The proponents of the bill need to share with committee which version is most critical to them.

164 WILLIAMSON: At the interim committee, the Oregon Association of Defense Counsel did have a representative there and they did not have any specific objections.

167 CHAIR COHEN: I'm talking about criminal defenders.

174 WILLIAMSON: We'll draw it to their attention.

175 CHAIR COHEN: Work with Bill Taylor.

176 SEN. SPRINGER: Is it the experience of OTLA members that some DA's will provide the information and some will not until prosecution over?

184 FOOTE: In some situations, it has to do with personal relationships with the District Attorney.

190 CHAIR COHEN: There's merit to basic mission of the bill, but at what point do we cut it off?

194 SEN. SPRINGER: Do we have to think about asking our drafter to an exception to the public records law?

195 CHAIR COHEN: No. According to Bill Taylor, we might have a question of

constitutionality based on the variation between the relating clause and the language of the bill.

205 SEN. SHOEMAKER: What about the statute of limitations? If you have a short statute of limitations for the criminal act and a long one for the civil action, would that require the DA to retain the records pertaining to the criminal conviction until the statute has expired to the possible civil action? And would that pose a problem?

213 FOOTE: See the problem. Need to talk to the District Attorneys to find out how long they retain these records. Not the intent of the bill to require that they be retained for a certain period of time.

223 VALERIE SALISB URY, LEAGUE OF OREGON CITIES: Bill would apply to ;municipal prosecutions. Neutral on bill, but request specific language authorizing the recovery of reproduction expenses.

232 CHAIR COHEN: If you'd work with Bill Taylor on that amendment, we'd appreciate it.

233 DALE PENN, OREGON DISTRICT ATTORNEYS ASSOCIATION: District Attorneys support concept of providing information to the victims so they can recover civil damages. The problem is doing that without harming ability to criminally prosecute. ODAA has problems with bill if expanded beyond drunk driving cases and auto accidents. Giving out reports, when victim is witness in criminal case, may effect the criminal cases. Problems of this kind occur to much smaller degree in auto cases.

- Likes savings clause where District Attorneys can appeal to criminal court for protective order; difficulty is inability to enforce it.

- Suggests that victim not automatically get all information, but apply to the criminal judge who'd disclose whatever is appropriate and place restrictions on it's use.

344 CHAIR COHEN: But if you decide not to file a criminal case, then the victim is left out in the cold and this would become more of a problem if prosecutions are delayed due to upcoming budget cuts.

358 PENN: Once a decision is made not to prosecute, then records are public information. Understand problem if prosecution delayed for follow-up investigation and would be open to something to deal with that.

- If some way to prevent formal deposition, then that would take care of most of objections away from the auto accident situation.

387 CHAIR COHEN: The victim is going to have to make the decision whether to take it out of the hands of the District Attorney or . . . .

392 PENN: In most criminal cases, the defendant does not have financial resources. This makes the biggest difference when the victim is looking for the "deep pocket."

408 SEN. SHOEMAKER: The problems mentioned arise when a civil action is underway during the pendency of the criminal action. Most criminal actions are concluded fairly quickly. Would it work to always allow the disclosure after the prosecution of the case?

420 CHAIR COHEN: It's that way now.

424 PENN: That's my interpretation of the public records law.

427 FOOTE: Not aware of any instances of where the information has been withheld when prosecution over. Problem is when you have lengthy investigation and delay of the criminal trial.

- In situation Dale Penn has mentioned, it might be appropriate under the language of the bill to go to the judge and prevent filing of civil case or formal discovery in the civil case. Want ability to build case before filing the civil complaint; in many cases, information needed for civil case not critical to the criminal prosecution.

- Although defendants often without financial resources, in civil cases they're protected by insurance companies who have access to the information through the defendants.

TAPE 13, SIDE B

023 CHAIR COHEN: I think we can work out a compromise; there needs to be safeguards about the discovery process.

027 SEN. SHOEMAKER: Won't the civil attorney want the information developed during investigatory phase before the District Attorney decides to prosecute? Shouldn't it be broaden to include this type of information?

037 PENN: That's their intent.

039 SEN. SHOEMAKER: But, technically, a criminal prosecution doesn't begin until you file?

040 PENN: That's right.

041 CHAIR COHEN: Section two has to be rewritten. As written, it does not do what requesters . . . .

044 FOOTE: And it's not our intention to do anything to impede a criminal prosecution. Hope the victim does not have to make a choice between the criminal prosecution and the civil action.

SB 434

057 FOOTE: Refers to Exhibit F. The concern the Oregon Trial Lawyers



Association has is the image of lawyers. Solicitation for cases is demeaning to the profession and can cause disrespect for the law and the justice system.

- Particularly dislikes direct mail advertising. It causes unnecessary intrusion into privacy of accident victims. Timing of the mailing is a problem; cites example. Notes Supreme Court case saying it's permissible commercial free speech. The Bar has passed various disciplinary rules governing direct mailing.

- The bill does not ban direct mail advertising; only cuts off access through the Department of Motor Vehicles to accident reports for commercial purposes. Companies purchase accident reports en masse from DMV and resell to law firms who take the information from the reports to do direct mail advertising. Have brought examples of what law firms have done. (Exhibit G).

- The bill does not make the information confidential or privileged in any way. Does not cut off legitimate access to the information. No constitutional problems; not banning solicitation. Can still get reports through the police. Only makes direct mailing more difficult.

- Suggests amendment to bill (Exhibit H).

169 SEN. HILL: Is it more difficult to get accident reports from the police?

172 FOOTE: Typical method of getting accident report from the police is to send a letter asking for the report. What's happening is that an attorney gets a stack of accident reports, writes down the names of the victims, and tailor their computerized letters accordingly; don't think they can write to the police and ask for copies of every police report. Maybe the bill ought to be expanded to prohibit police agencies from making these reports available for commercial purposes.

- The materials sent out by law firms through direct mail contain a lot of representations that are not unique to them. Lists examples.

203 CHAIR COHEN: Can we require truth in advertising through the Bar?

204 FOOTE: There is the OTLA resolution and another by the Bar. Bar has, on occasion, investigated various attorneys' solicitations to determine if they contain misrepresentations, but it's a difficult job when the representations are as general as they are.

- Believe that direct mail advertising is one step too far in terms of intruding on victim and intruding on their privacy.

226 WILLIAMSON: We're not trying to interfere with anybody's freedom of speech, but state does not have to add people using direct mail.

236 SEN. BUNN: If purpose is to just deal with the solicitations, couldn't the bill be written more narrowly so as not to net other commercial purposes?

241 WILLIAMSON: Would run afoul of the Supreme Court's Shapiro decision.

248 SEN. BUNN: Could information from police be denied to insurance companies under this bill?

255 FOOTE: That's not our intention.

259 CHAIR COHEN: We're talking about DMV records only; not police records.

- Can still advertise commercially if they wanted to use a police record?

262 WILLIAMSON: If you can get the police to give you everybody who's been in an accident every day.

264 CHAIR COHEN: So we're talking about the general DMV lists?

267 FOOTE: That's our intention.

268 SEN. BUNN: But what about reports submitted by police officers?

270 CHAIR COHEN: Does not change the police officers role at all except can't pick all the reports up at DMV.

275 SEN. BUNN: So we're just making it more inconvenient to carry out the practice.

276 CHAIR COHEN: Yes.

277 SEN. BUNN: Aren't we also making it more inconvenient for an insurance company to carry out . . . guess that would be different because insurance company does not need a whole list of them.

281 CHAIR COHEN: And their also servicing their own individuals.

282 FOOTE: The insurance company, when notified of a claim, will contact the police for the report. They would not have any use for all the police reports in the state.

- Not intention to cut off insurance companies' access to the police nor the access of the attorney who writes the police asking for a report.

291 CHAIR COHEN: The drafting is very convoluted.

292 SEN. BUNN: Want to be certain that there is protection against having police saying that the record is not available to an insurance company.

299 FOOTE: Happy to work with anyone from the insurance industry to assure them that that is not our intention.

306 SEN. HILL: Does DMV sell lists of accidents for other commercial situations as well?

316 SEN. HAMBY: They do. There is a legislative counsel draft circulating now that would prohibit DMV from doing that.

319 CHAIR COHEN: Let's have someone from DMV come up and answer that question.

323 KARL KRUGER, MOTOR VEHICLES DIVISION: We sell to only two or three people who buy police accident reports in bulk. In 1990, sold over 100,000 reports, the majority were purchased by no more than three individuals.

335 SEN. BUNN: Of those three people, know if any resold those records?

343 KRUGER: That's our understanding.

344 SEN. BUNN: And you have no criteria as to what the information is used for?

346 KRUGER: No.

376 THOMAS HOWE, ATTORNEY AT LAW: Introduces four witnesses opposing bill.

389 SANDRA THOMAS, CITIZEN: Was involved in an accident in 1988. Through letters that I got in the mail, I found Mr. Howe. Praises Mr. Howe. Complains about the attorneys in her local area and only way she could find out about non-local attorneys was by direct mail advertising; did not have Portland phone book (was in Newport at that time) and not able to go out and research.

TAPE 14, SIDE B

011 THOMAS JACKSON, CITIZEN: Daughter was in auto accident. Didn't know who to go to or what to do. From small town; realized might want to consult with an out-of-town lawyer. Got a letter from Mr. Howe; it answered a lot of questions. Mr. Howe said he's send me the accident report and more information. Praises Mr. Howe. The letter gave him a lot of peace.

063 ARVA FORD, CITIZEN: Had accident. Got information from Mr. Howe of things that she should do. Complains of treatment by the other driver's and own insurance company. Thankful for Mr. Howe's letter; it was clearly identified as advertising; Howe did not apply pressure. For elderly, no other way to find out about rights.

124 TOM CROSS, CITIZEN: Mr. Howe's information was helpful; it came at time when needed it the most. Do not consider it to have been intrusion into privacy; it's a necessary and helpful thing. The bill will simply add to the cost that is charged for the information. Praises Mr. Howe.

154 SEN. SPRINGER: For Mr. Cross; still live on SW Carson?

155 CROSS: Yes.

156 SEN. SPRINGER: Welcome.

- How many letters did you receive from attorneys after the accident?

158 CROSS: Just Mr. Howe's letter.

159 SEN. SPRINGER: How would you feel if you got 100 letters from lawyers?

160 CROSS: Wonderful. It gives me the opportunity to evaluate the attorneys from what they've presented me in my home within my own time frame. I don't have to evaluate them from a 30 second television spot or by taking time from my day to go in for a conference in their office.

173 SEN. HAMBY: All of you received materials clearly marked as "advertisement?"

175 ALL FOUR WITNESSES: Yes.

177 SEN. HILL: We're you aware that the Bar had a referral service?

180 THOMAS: No. Found that out from Mr. Howe.

188 HOWE: Sends direct mail to accident victims. Refers to packet of information (Exhibit I). Packet includes copies of two sets of letters sent to accident victims: letter for children and a standard letter.

- All letters contain word "advertisement" in bold on outside of envelope.

- Describes what comes with the letter. Includes free copy of police report; many times, their insurance company has denied to provide copy.

- Accident victims have told him that certain police departments have denied them access to their own police report.

- Those agencies that do provide reports charge \$10.

- All information provided in letter is free without obligation.

- OTLA hates direct mail because it lowers attorney fees. - Bill blows hole in the public records law; commercial purposes is one of the reasons we have public records.

- Lawyers who obtain reports from DMV pay 24 cents a report. No public agencies will give these reports to attorneys to do direct mail. If agency were to provide reports, cost would be is \$10 a report. Cannot offer low fees at \$10 a report. This is an attempt to stop direct mailing by cutting off the source.

- Have constitutional problems with the bill regarding free speech and equal protection. Committee should consider legal costs of defending the bill in court.

340 CHAIR COHEN: That depends on whether we include all DMV kind of piece and we'll be looking at that.

343 HOWE: Bill helps high priced law firms to maintain higher fees in the state.

352 SEN. HILL: Do you receive all accident reports periodically? Do you sift through them?

357 HOWE: We sift through them to find cases where there is a liability issue and verify that the victim was injured. If injured, wait a longer period of time before mailing.

- Also, the Bar very closely scrutinizes truthfulness in advertising.

364 SEN. HILL: Are you concerned about practice being handled by people less considerate?

370 HOWE: That's an important issue. The Bar very closely monitors this because they object to direct mail advertising. Lawyers who violate truth in advertising or who imposes themselves on clients should be sanctioned.

381 IVAN ZACKHEIM, ATTORNEY AT LAW: Initiated direct mail advertising in Oregon. Bar prohibits direct contact with accident victim when attorney knows or should know that recipient is physically or emotionally incapable of independent judgment.

- Most direct mail does not reach recipient until 10 days after accident, during which time they've been bombarded with TV and radio advertisements of personal injury lawyers.
- Bar prohibits misleading and untrue statements; attorneys not allowed to advertise themselves as better, more experienced, or having higher qualifications than competitors.
- OTLA members are the heaviest TV advertisers in the state.
- Mr. Howe's direct mail advertisements have done a lot to drive down costs of contingent legal fees.
- When there's problem with direct mail letter, the Bar has been quick to pick up on it.
- Direct mail advertising allows comparison in privacy of own home.
- Proposed amendment from OTLA is indication of how upset they are over direct mail advertising.
- The only legitimate access that direct mail advertisers have is through bulk DMV reports.

TAPE 15, SIDE A

033 JOHN GERVAIS, OREGON NEWSPAPER PUBLISHERS ASSOCIATION: We strongly oppose any closure of public records without strong justification and we're very uncomfortable with the bill. Want to make certain that news gathering operations are not considered commercial operations.

043 WILLIAM BIRHANZL, CITIZEN: The first person to negotiate access to DMV bulk reports back in 1985. Provides police accident reports to anyone who needs them; generally quicker and cheaper than the departments. Customers include insurance carriers and attorneys. Feels strongly about public's right to access anything that's a public record. Cites examples of non-insurance, non-attorney commercial endeavors who access reports through him. Says someone could lose their life if this information is not available.

100 CHAIR COHEN: Make sure you leave your card with Bill Taylor so we can more specific information from you.

110 STEVE GIARDINI, ATTORNEY AT LAW: Have been doing direct mail advertising for two years. (Exhibit K) Agrees with statements made by other opponents to the bill. Direct mail gives consumers good information and promotes fee competition. Bar closely scrutinizes direct mail. Bulk of complaints come from attorneys, not clients.

123 CHAIR COHEN: That's probably likely and not unexpected. 124 GIARDINI: This is essentially a dispute over market share. OTLA filed brief in Shapiro case raising the same points they've made here. Believes the bill would be ruled unconstitutional if it passed. Asks for permission to submit more information in writing.

155 CHAIR COHEN: Please do.

157 WILLIAM BERKSHIRE, ATTORNEY AT LAW: Sends out direct mail advertising. Refers to memorandum and brochures (Exhibits J and L). Direct mail is good for people of Oregon; especially for those who are not as sophisticated and don't know where to turn for help.

170 DONALD REID, ATTORNEY AT LAW: Have done direct mail. Stresses that OTLA does not represent all trial lawyers. - While many insurance companies do good job of paying what's owed on a claim and informing the insurers of their rights under their policies, some do not.

- Difficult for consumers to size up attorney through TV advertisements. Some of those ads are confusing.

199 CHAIR COHEN: Does the Bar regulate the TV advertising?

200 REID: Yes.

- Direct mail better than TV commercial about advising clients of their rights; gives examples.

245 SEN. HILL: Do we have the actual Bar records about complaints?

246 CHAIR COHEN: We can get them.

247 SEN. HILL: Wants to see what kind of complaints they've received.

250 CHAIR COHEN: Interested in hearing from the Bar and their process of evaluating the complaints.

- Adjourns hearing at 3:20 pm.

Submitted by:

Reviewed by:

Mark Thorburn  
Committee Counsel

Bill Taylor Committee Assistant

EXHIBIT LOG:

A - 3/9/89 Letter to John Kitzhaber and Vera Katz from Ron Marceau  
Re: Council on Court Procedures - On SB 379 - Ron Marceau - 3 pages

B - 1/4/91 Letter to John Kitzhaber and Larry Campbell from Ron  
Marceau Re: Council on Court Procedures - On SB 379 - Ron Marceau - 6  
pages

C - 1/31/91 (Predated) Statement of Frederic Merrill Re: SB 379 -  
Ron Marceau - 3 pages

D - Testimony on SB 402 by Andrew Morrow - Jeff Wolfstone - 2  
pages

E - Testimony on SB 426 - Jeff Wolfstone - 3 pages

F - OTLA Bd. of Gov.s Resolution - On SB 434 - Jeffrey Foote - 1 page

G - Series of letters and other materials - On SB 434 - Jeffrey Foote - 9 pages

H - Proposed Amendment to SB 434 - Jeffrey Foote - 1 page

I - Memorandum in Opposition to SB 434 - Tom Howe - 83 pages plus 2 brochures and 2 letters in envelopes

J - "Facts about Automobile Accidents and Injuries" - William Berkshire - Tri-folded 2 sided brochure

K - "Accident Injury: How We Can Help" - Steve Giardini - Tri-folded 2 sided brochure

L - Memorandum Re: SB 434 - William Berkshire - 3 pages