



# Legislative Testimony

## Oregon Criminal Defense Lawyers Association

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March 26, 2019

The Honorable Representative Jennifer Williamson, Chair  
House Judiciary Committee, Members

**Re: Testimony Concerning HB 3249**

Dear Chair Williamson and Members of the Committee:

My name is Richard Wolf. I am an attorney who has practiced criminal defense in Oregon for over 30 years and I have also been a Life Member of OCDLA for many decades as well. I attended law school at Northwestern School of Law of Lewis & Clark College and now handle only aggravated murder cases as an independent contractor with the Office of Public Defense Services. I am currently and have previously been appointed as “Learned Counsel” in federal capital cases here in the District of Oregon and I am also one of two Oregon Capital Resource Counsel, assisting other capital defense teams around the state handling aggravated murder cases. I have represented people charged with aggravated murder in numerous trial courts throughout Oregon, and on appeal and in federal *habeas corpus* proceedings before the Oregon Supreme Court, the federal District Court of the District of Oregon, the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States. I was appointed to my first capital case by then Justice Mick Gillette in 1994.

Thank you for the opportunity to provide testimony in support of The Lawyer-Client Confidentiality Protection Act HB 3249. This proposal updates and clarifies Oregon law regarding a client’s constitutional right to confidentiality with a lawyer and the “representative of the lawyer,” by creating a second visiting log for legal visitors that cannot be informally reviewed, is exempted from public records production, and provides that any evidence derived in violation of this privilege cannot be used as evidence against the client in court.

This proposal also ensures the Lawyer-Client Privilege is upheld by codifying the notion that not only does the lawyer have a privilege with the client, but also the “representatives of the lawyer,” which include any experts and those expert’s identities, which currently in most correctional facilities can simply be determined by examining the jail visiting log. This legislation makes clear what case law has also held; that jailors should not be sharing visiting information about and a lawyer’s representatives with the prosecution, the police or the public.

In *USA v. Pedersen*, in which Mr. Pedersen was held in the Multnomah County Detention Center facing potential federal capital charges, U.S. District Court Judge Ancer Haggerty entered the following Order,

Moreover, the MCSO and the U.S. Marshal are prohibited from communicating with the USAO regarding contact between Pedersen and his legal team, including activity occurring during legal visits, the frequency of such visits, the identity of persons attending such visits, and any communications between the

defense team and Pedersen. If either the MCSO or the U.S. Marshal have concerns regarding defense team activity, they are encouraged to bring those concerns to the attention of the defense team or, as a second option, to this court. Such information may only be provided to the USAO after approval from this court, at which time it will be provided to the defense as well.

*U.S. v. Pedersen*, No. 3:12-cr-00431-HA, 2013 US Dist LEXIS 86837, at 13-16 (D. Or. June 20, 2013).

The Washington County Jail recently switched to a privileged professional visiting log in the pending aggravated murder retrial of *State v. Oatney*, Washington County Case No. 18CR70058, after I filed a motion with the Circuit Court in which Washington County Counsel, representing the Washington County Sheriff's Office, agreed to create a separate professional visiting log, and to treat it as both privileged and exempt from public records disclosures in order to maintain attorney & attorney representative/client privileged information for persons charged with crimes who are unable to obtain bail or release. The bill creates the logical remedy of exclusion from use of any information derived from violations of privileged communications, which also includes the identities and frequency of "representatives of the lawyer," as defined under existing law (The Lawyer-Client Privilege in ORS 40.225).

Thank you for reading my testimony and thank you to the bill Sponsors Madam Chair Williamson and Representative McLane for championing this bill. I am happy to answer any questions about this important proposal.

s/ Richard L. Wolf  
Attorney at Law

### **About OCDLA**

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

**For questions or comments contact:**  
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