

# The Sacramento Bee

Wednesday November 30, 1994

METRO FINAL EDITION page A3

## Proposed lawyers gag rule resisted: Bar trying to mute out-of-court remarks

By Claire Cooper

BEE LEGAL AFFAIRS WRITER

SAN FRANCISCO It's a multiring media circus.

Los Angeles District Attorney Gil Garcetti predicts publicly that O.J. Simpson will confess - the prosecution evidence is all that strong.

F. Lee Bailey, a member of Simpson's defense team, announces that his client wasn't even at the scene of the famous double murder.

On and on it goes. For months, explosive pretrial publicity flies from the fast-talking mouths of lawyers in and around the Simpson case.

Eventually, the Legislature gets fed up. It passes a bill directing the State Bar to shut down the show.

Now the State Bar is trying, but the assignment isn't easy.

During the first of two public hearings on a proposed attorney gag rule, conducted Tuesday at the bar's San Francisco headquarters, witness after witness tore into the draft rule, calling it unfair and unworkable.

Nobody supported it, though Sen. Quentin Kopp, the San Francisco independent who wrote the legislation, continued to maintain that California must join the majority of states in putting some limits on lawyers' public statements.

The rule would bar out-of-court comments that "will have a substantial likelihood of materially prejudicing" a court proceeding. It's a modification of an American Bar Association rule that has been adopted in some form in 40 states.

But the version being considered by the State Bar would change California from being the least restrictive state to being one of the most restrictive, second only to Washington state, testified

Richard A. Zitrin, a legal ethics instructor who chairs the State Bar's ethics committee.

Several witnesses said the proposed rule would not achieve its purpose. They said it would not deter some of the most prolific sources of prejudicial leaks - the police, who often exaggerate the strength of evidence, and elected officials, who commonly side with the prosecution.

"There's no way the State Bar can muzzle those sources of comment," said John T. Philipsborn, testifying for the defense group California Attorneys for Criminal Justice.

Witnesses said the proposed rule should be amended to let defense lawyers respond in a meaningful way to accusations from any source.

San Francisco attorney David B. Newdurf said a lawyers-only gag would also discriminate against poor litigants because rich ones can hire public relations agents.

Testifying for the Northern California chapter of the Society of Professional Journalists, James Wheaton said a gag on lawyers in civil cases, such as product liability disputes, also would harm ordinary citizens.

Matters of substantial public concern, such as safety defects in automobiles, often come to light only because victims' lawyers talk to the press, he said.

In both civil and criminal cases, said Wheaton, the press gives the public vital information.

"The people with the notebooks and the cameras are your friends," he said.

The Kopp legislation requires the State Bar to decide on a rule and send it to the state Supreme Court for approval by March 1.