

Testimony to be presented to the Senate Judiciary committee on March 31, 2015

MARK COGAN'S TESTIMONY IN SUPPORT OF SB 822 & SB 825

When I was 12 years old I had already decided to become a lawyer. It was about that time that my grandfather, a tradesman, was called to serve on the Multnomah County grand jury. Despite his lack of formal education, my grandfather easily saw the flaws of our grand jury system. He told me it was an utter waste of time for him and the other jurors. It did not take a formal education for my grandfather to see what the grand jury was (and still remains): a rubber stamp for the prosecutor.

40 years ago, while I was a student at the University of Oregon, I had the good fortune to work as a page at the Legislature. I followed that up with service as vice president of the UO student body and a student lobbyist. I came to admire the dedicated and hard-working men and women who serve in our Legislature; in particular, legislators like Ted Kulongoski, Dave Frohnmayer, and Hardy Myers, just at the beginning of their careers. I was impressed with their dedication to our State and their bipartisan leadership.

Back in those days, "the Oregon way" stood for open government, transparency, and accountability. Government officials realized they were accountable to the citizens. That was the age in which the open meetings laws were passed, following the wisdom that "sunshine is the best disinfectant." Today your committee is considering important legislation, SB 822 and SB 825, which would bring about long needed reforms in Oregon's grand jury system. Finally, the Oregon values of transparency and accountability will be applied to this vital part of our legal system. With the passage of these reforms, no longer will the grand jury be merely a rubber stamp for the prosecution. The grand jury will be restored to the vitally important function it was designed to perform: an opportunity for members of the community to screen out cases that do not merit further prosecution.

I have discussed this issue with legislators of all political stripes. These are not liberal bills. These are not conservative bills. Legislators from all backgrounds express support for grand jury reform, including those from the right and the left, urban and rural, and everywhere in between. Legislators have asked me why a prosecutor would ever want to oppose the "good government" reforms that are expressed in bills such as SB 822 and SB 825. They have asked me: "what are they (the prosecutors) afraid of?"

Passing these bills will advance the sound administration of justice in our State. No longer will prosecutors be able to dictate what cases shall be prosecuted and what cases shall not. By recording the proceedings, there will be some measure of accountability and transparency, while preserving the independence of the grand jury process. By making grand jury testimony available to defense counsel in advance of trial, the State will promote the cause of justice. Witnesses will no longer be able to testify at trial contrary to their testimony to the grand jury, without consequences. Prosecutors will gain as a result of this legislation, because they will be able to prosecute witnesses who lie under oath in their testimony to the grand jury or at trial.

Under current practice in this State, grand jury testimony is not recorded. Thus, there is no accountability. Once this legislation is enacted and grand jury testimony is recorded, witnesses will be held accountable for their sworn testimony, both in the grand jury and at trial. Moreover, once grand jury proceedings are recorded, prosecutors will have an incentive to be faithful stewards in

regard to presentation of cases to the grand jury. They will no longer be able to treat the grand jury as rubber stamp.

Having practiced in the area of criminal justice for more than 3 decades, I believe it is important to grant the suspect the opportunity to testify before the grand jury. I have handled many cases in which the accused has opted to testify. I have seen cases where, after hearing from the suspect, the grand jury decided that the case was not worthy of further prosecution, thus sparing the government tens of thousands of dollars that would have been required to prosecute, and defend, adjudicate, and imprison, a person unjustly accused. By giving suspects the opportunity to testify before the grand jury, cases that are unworthy of prosecution can be culled from the criminal justice system. The grand jury will be able to exercise an important, independent role in promoting justice.

Finally, let me emphasize the important benefits to recording the proceedings before the grand jury. In another State where I formerly practiced law before returning to Oregon, judges exercised their supervisory powers over the grand jury by dismissing indictments because of prosecutorial misconduct. One client of mine was brought before the grand jury in shackles. After he was indicted, the judge dismissed the indictment because my client's basic rights had been violated. Another client was indicted by a grand jury that lacked the requisite legal quorum. In another case, the prosecutor incorrectly instructed the grand jury on the legal standards. In yet another case, the prosecutor improperly badgered and humiliated the accused during the suspect's testimony. These indictments were dismissed, and rightly so.

And let us not assume that proceedings before Oregon grand juries are conducted more appropriately than other States. Last week I was in Southern Oregon speaking with attorneys about grand jury reform. I was reminded of an instance of widespread prosecutorial impropriety in the presentation of cases in Josephine County a number of years ago, which resulted in the dismissal of many indictments. Recording the proceedings before our grand juries will enable our judges to address such miscarriages of justice.

Thank you for considering my testimony, and thank you for adopting some long needed reforms of our grand jury process.

Mark C. Cogan P.C. Law Office
Crown Plaza Building, Ste 780
1500 SW First Avenue
Portland, Oregon 97201
(503) 827-8092
mark@coganlawoffice.com
www.CoganLawOffice.com